

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WEB TRACKING SERVICES, L.L.C.,

Petitioner,

vs.

HUNTANA, L.L.C. and WEBSTAT.COM, L.L.C.,

Respondents.

Cancellation No. 92043502

Registration No. 2,058,787

Date of Registration: May 6, 1997

Trademark: WEBSTAT

PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND TO STAY DISCOVERY


Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

The Petitioner moves the Trademark Trial and Appeal Board (TTAB) for summary judgment declaring that there is no material issue of fact and that as a matter of law the Petitioner is entitled to prevail as to : (1) abandonment of U.S. Trademark Registration No. 2,058,787 by the Registrant/Respondent, Huntana, L.L.C. of WEBSTAT for software: and (2) the Respondent Webstat.com, L.L.C., committed fraud in preserving Registration No. 2,058,787 by knowingly filing two false combined Section and Section 15 Lanham Act Declaration.

During the pendency of this Motion, the Petitioner moves the TTAB for an order staying discovery and testimony.

DATED this 24th day of August, 2004.


LYNNE G. FOSTER
Attorney for the Petitioner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WEB TRACKING SERVICES, L.L.C., Petitioner, vs. HUNTANA, L.L.C. and WEBSTAT.COM, L.L.C., Respondents.	Cancellation No. 92043502 Registration No. 2,058,787 Date of Registration: May 6, 1997 Trademark: WEBSTAT
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**MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY
JUDGMENT AND TO STAY DISCOVERY**

Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



08-27-2004

U.S. Patent & TMO/TM Mail Rpt Dt. #22

I. INTRODUCTION

The Petitioner, Web Tracking, L.L.C., concurrently moves the above-identified Tribunal (TTAB) for Summary Judgment because: (1) the registrant/ Respondent, Huntana, L.L.C., was dissolved in December 1997 and didn't use WEBSTAT (Reg. No. 2,058,787) on software goods thereafter resulting in abandonment of the mark WEBSTAT for software and abandonment of Reg. No. 2,058,787 (notwithstanding the purported February 2003, assignment of Reg. No. 2,058,787 to Respondent, Webstat.com, L.L.C.); and (2) the Respondent, Webstat.com, L.L.C., committed fraud in preserving Reg. No. 2,058,787 by knowingly filing two false combination § 8 § 15 Lanham Act Declarations.

II. UNDISPUTED FACTS

1. Olivier Galy (Galy) is, and at all relevant times has been, the manager of the Petitioner, Web Tracking Services, L.L.C. (Tracking), a company domiciled in South Carolina. Mr. Galy has custody and control over the attached exhibits, all of which are authentic. ¶ 4, Galy Decl.

2. Galy's French company, Green-Acres Services (GreenAcres), registered "web-stat.com" as a domain name on February 9, 1998, without knowledge of the Respondent, Webstat.com, L.L.C.. Green-Acres is the current owner of the domain name "web-stat.com". ¶ 6 and Exhibit "A," Galy Decl.

3. Tracking uses web-stat.com with the consent of Green Acres. ¶ 7, Galy Decl.

4. Tracking provides access services to third parties over the internet to certain statistical information. ¶ 8, Galy Decl.

5. Both Green Acres and Tracking are small family-owned businesses. ¶ 9, Galy Decl.

6. On August 11, 1998, about six (6) months after registration of the domain name "Web-stat.com" by Green Acres, the domain name "webstat.com" was registered purportedly by the Respondent, Webstat.com, L.L.C.. However, the Respondent, Webstat.com, L.L.C., did not exist until September 22, 1999. Exhibits "B" and "H" and ¶ 10, Galy Decl.

7. On information and belief, on or before August 11, 1998, Respondent, Webstat.com, L.L.C., knew of the domain registration of "web-stat.com," by Green Acres and any resulting conflict between "web-stat.com" and "webstat.com." ¶ 11, Galy Decl.

8. In addition to domain name registration, Green Acres and Tracking have used WEB-STAT as a common law trademark beginning in February, 1998, and continuing to the present time. ¶ 12, Galy Decl.

9. The Respondent, Webstat.com, L.L.C., registered WEBSTAT.COM in the U.S. Trademark Office as service mark Reg. No. 2,395,542, claiming a date of first use as of January 16, 1999 (nine months before the Respondent, Webstat.com, L.L.C., was formed). Green Acres and Tracking began use of web-stat.com for like services almost a year before January 16, 1999. Exhibit "C" and ¶ 13, Galy Decl.

10. The Respondent, Webstat.com, L.L.C., on information and belief, knew of the use of WEB-STAT by Web Tracking when the Respondent, Webstat.com, L.L.C., filed its trademark application on September 17, 1999 (five days before the plaintiff was formed) in the U.S. Trademark Office, which led to the registration. Exhibit "C" and ¶ 14, Galy Decl.

11. When the Respondent, Webstat.com, L.L.C., filed its trademark application on September 17, 1999, it made the following false oath to the U.S. Trademark Office:

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/services mark sought to be registered, or if the application is being filed under 15 U.S.C. § 1051(b), he/she believes the applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true. ¶ 15, Galy Decl.

12. A copy of a mandatory form obtained from the Manual of Trademark Examining Procedure published by the U.S. Trademark Office for federal trademark applications is provided. Exhibit "D" and ¶ 15, Galy Decl.

13. The Respondent, Webstat.com, L.L.C., has for six years known of and acquiesced in use by Green Acres and Tracking of the name "web-stat.com." ¶ 16, Galy Decl.

14. As the first user of the WEB-STAT mark, Green Acres and Tracking have service mark rights in WEB-STAT.COM superior to any right claimed by the Respondent, Webstat.com, L.L.C., for internet statistical informational services. The Respondent, Webstat.com, L.L.C., under oath, at a point in time when Respondent did not exist, claimed its first date of use of WEBSTAT.COM for the services as January 16, 1999, almost a year after registration and use of "web-stat.com" by Green Acres. Exhibits "A" and "C" and ¶ 17, Galy Decl.

15. While U.S. Trademark Reg. No. 2,058,787 was purportedly assigned in February 2003 to the Respondent by Huntana, L.L.C., that mark pertains to software products in international class 9, not to internet informational services in international class 35, which is the type of services provided by Tracking. Tracking does not produce and does not sell software products, nor, on information and belief, does the Respondent, Webstat.com, L.L.C. produce or sell software products under the name WEBSTAT. A copy of the purported assignment of Reg. No. 2,058,787 is provided. Exhibits "E" and "F" and ¶ 18, Galy Decl.

16. Initial and continuing use of the mark of the 2,058,787 trademark registration on definitive goods by an existing owner is necessary for valid registration and to prevent abandonment of the trademark. ¶ 19, Galy Decl.

17. On information and belief, the Registrant/Respondent (Huntana, L.L.C.) did not continuously use WEBSTAT either for internet services or software goods from the alleged date of first use (May 16, 1995) until the date of the purported assignment (either February 21, 2003 or February 26, 2003), as Huntana LLC was dissolved in 1997. Exhibits "F" and "O" and ¶ 21, Galy Decl.

18. Certain statutes (15 U.S.C. §§ 1058, 1065) and federal regulations (37 CFR §§ 2.160 and 2.161) apply to the mandatory sixth year continued use affidavit or declaration required to be filed by the owner and necessary to preserve a trademark registration. Exhibits "J" and "K" and ¶ 53, Galy Decl.

19. Selected portions of the Manual of Trademark Examining Procedure apply to the

mandatory sixth year continued use affidavit or declaration necessary to preserve a trademark registration. Exhibit "L" and ¶ 54, Galy Decl.

20. The prosecutorial history of the trademark application which became Reg. No. 2,058,787 includes, but is not limited to, two false sixth year declarations filed with the U.S. Trademark Office by which U.S. Trademark Reg. No. 2,058,787 , one on behalf of the Respondent Webstat.com, L.L.C., and one on behalf of the Respondent Huntana, L.L.C., thereby fraudulently retaining the mark in registered status and fraudulently causing the registration appear to be "incontestible." Exhibit "M" and ¶ 55, Galy Decl.

21. The prosecutorial history of the trademark application which became Reg. No. 2,058,787 is provided whereby Reg. No. 2,395,542 was obtained by bindingly distinguishing over the goods of Reg. No. 2,058,787 on 01/26/00 as follows:

We [the Respondent, Webstat.com, L.L.C.] propose a modification to the recitation of services to read, "Providing instant statistical information to website owners and managers regarding the visitors to their website via a global computer network." This modification then clarifies that WEBSTAT.com is not software, but rather a website providing statistical information and should set it apart from the mark No. 75/007,657 [Reg. No. 2,058,787]. (Emphasis added.)

¶ 56, Galy Decl.

22. Since WEBSTAT.com, LLC and Tracking are in the same business, the distinction made in paragraph 54 above for WEBSTAT.com necessarily also applies to Tracking. ¶ 57, Galy Decl.

23. The Secretary of State for Montana dissolved Huntana, LLC in 1997. Exhibit "O" and ¶ 58, Galy Decl.

24. A combined §§ 8 and 15 declaration form is recommended by the U.S. Trademark Office, showing that an existing entity, which is the owner and is selling goods under a registered trademark, must verify, by an officer of the entity, that the mark has been used continuously for five consecutive years on the goods for which registration was obtained. Exhibit "P" and ¶ 59, Galy Decl.

III. ARGUMENT

A. The Reason of Webstat.com, L.L.C.'s Efforts to Obtain an Assignment of Reg. No. 2,058,787

From the undisputed facts Webstat.com, L.L.C. is second in time in its use of "Webstat.com" for internet statistical services compared to the use by Green Acres/Tracking of "web-stat.com" for the same services.

Webstat.com, L.L.C. became aware of Reg. No. 2,058,787 during the prosecution of the application which became U.S. Reg. no. 2,395,542 and distinguished on the basis of software verses internet statistical services.

At some point, likely sooner rather than later, Webstat.com, L.L.C. realized that it was second in time in the use of "webstat.com", and sought to spuriously gain a claim to priority in the face of the distinction drawn before the U.S. Trademark Office by Webstat.com, L.L.C., leading to Reg. No. 2,395,542.

So the fictitious assignment and its objective were tainted from the beginning.

B. Even U.S. Reg. No. 2,395,542 is Tainted.

Webstat.com, L.L.C.'s WEBSTAT.COM application was based on an actual use in commerce. An application based on use in commerce under 15 U.S.C. §1051(a) must be filed by

the party who owns the mark on the application filing date. If the applicant does not own the mark on the application filing date, the application is void. *See* 37 C.F.R. §2.71(d); *Huang v. Tzu Wei Chen Food Co. Ltd.*, 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988). Here, at the time of filing its use-based application, Webstat.com, L.L.C. could not have owned the mark because the Webstat.com, L.L.C. did not exist.

In addition to filing its application for registration prior to its date of incorporation, Webstat.com, L.L.C. also made a false statement with respect to its date of first use of the mark because Webstat.com, L.L.C. had not yet come into legal existence. It claimed, under oath, its first use date to be January 16, 1999. However, this alleged first use date precedes Webstat.com, L.L.C.'s date of incorporation by eight months. A misstatement of the date of first use in a use-based application is not fraudulent *as long as there has been some valid use of the mark prior to filing date*. *See Western Worldwide Enterprises Group, Inc. v. Qinqdao Brewery*, 17 U.S.P.Q.2d 1137 (TTAB 1990). But here, Webstat.com, L.L.C. could not have made valid use of the mark prior to the filing date, again because it did not yet exist. Where a use based application contains a false statement of pre-application use and no use in fact occurred until after the filing of the application, then the registration is void *ab initio* and fraudulent. *See Orient Express Trading Co. v. Federated Dep't Stores, Inc.*, 2 U.S.P.Q.2d 1106 (S.D.N.Y. 1987) (holding that, while a misstatement of the date of first use alone may not itself be sufficient for finding fraud, the totality of false statements justifies a finding of fraud and cancellation of the registrations). Because Webstat.com, L.L.C. could not have used the WEBSTAT.COM mark as a trademark (that is, to identify and distinguish its goods and services from those offered by others) until after its formation, Webstat.com, L.L.C.'s WEBSTAT.COM registration is both invalid and fraudulent

C. U.S. Reg. No. 2,058,787 Was Abandoned by the Registrant, Huntana, L.L.C.

To overcome the lack of priority (webstat.com vs. web-stat.com), Webstat.com, L.L.C. sought and obtained an assignment of the WEBSTAT mark from Huntana, L.L.C.. Huntana obtained a federal registration (Reg. No 2,058,787) for WEBSTAT on May 6, 1997 for use in connection with “computer software for analyzing and monitoring electronic traffic at specific sites on computer systems” (Reg. No. 2,058,787). The Huntana, L.L.C. WEBSTAT registration claims a first use date of May 16, 1995. On February 21, 2003, Huntana, L.L.C. purported to assign all rights in the WEBSTAT mark, including Reg. No. 2,058,787, to Webstat.com, L.L.C.. Unfortunately for Webstat.com, L.L.C., this purported assignment is both fraudulent and invalid. The assignment is, in fact, nothing more than a sham, cooked up in an attempt to gain for Plaintiff a priority date preceding that of Web Tracking.

At the time of the purported assignment in February 2003, Huntana was no longer in existence. In fact, the records maintained by the Montana Secretary of State, show Huntana was dissolved over five years earlier on December 1, 1997. At that time, it ceased to be a limited liability company in good standing and was no longer authorized to conduct business. Montana law provides that a dissolved company forfeits all rights to carry on business. A limited liability company continues after dissolution “only for the purpose of winding up its business.” *See* MCA § 35-8-901(2). These “winding up” activities include prosecuting and defending suits, settling and closing the business of the company, disposing of and transferring the property of the company, discharging the liabilities of the company, and distributing to the members any remaining assets of the company. *See* MCA § 35-8-903.

In this case, Webstat.com, L.L.C. cannot reasonably argue that in “winding up” its business,

Huntana, L.L.C. continued to sell software products for over five years, or that assigning the WEBSTAT mark to Webstat.com, L.L.C. or filing a declaration of use and incontestability with the U.S. Patent and Trademark Office more than five years later are somehow part of its “winding up” activities. However, notwithstanding the fact that it had been dissolved for over five years and that there had been a corresponding six-year break in continuity of Huntana, L.L.C.’s use of the WEBSTAT mark on software for analyzing and monitoring Internet traffic (if, in fact, Huntana, L.L.C. never used the mark in commerce at all), Huntana, L.L.C. purported to assign its trademark rights in WEBSTAT to Webstat.com, L.L.C. “for good and valuable consideration.” Huntana, L.L.C. had lost its rights in WEBSTAT and Reg. No. 2,058,787. Therefore, Huntana, L.L.C. could not assign any trademark right to Webstat.com, L.L.C.. Clearly, the purported assignment was a sham.

D. An Abandoned Trademark is Not a Right Which Can be Assigned

Huntana, L.L.C. could not have assigned to Webstat.com, L.L.C. any trademark rights it once, but no longer, owned because, at the time of the assignment (which Webstat.com, L.L.C. concedes was essentially a quit-claim deed), Huntana, L.L.C. had been administratively dissolved for over five years and could not have continued to do software business using the mark WEBSTAT after dissolution. Under Section 35-8-911 of the Montana Code, when limited liability companies are administratively dissolved, “the limited liability companies may carry on business only as necessary to wind up and liquidate their business and affairs under 35-8-901 and to notify claimants under 35-8-908 and 35-8-909.” MCA 35-8-911. Ordinary course selling of software for another six years is continuing to do business, not winding up. It is unreasonable as a matter of law to claim that, on February 21, 2003, a three-member limited liability company that had been in

business only two years (1995-1997) was still engaged in winding up in February 2003. In February 2003, Huntana, L.L.C. did not have the legal capacity to execute an assignment to Webstat.com, L.L.C. and, even if it did, the Huntana, L.L.C. trademark registration of WEBSTAT for software expired due to non-use long prior to the assignment. Non-use by the registrant (Huntana, L.L.C.) for three years creates a statutory presumption of abandonment, a presumption which Webstat.com, L.L.C. can not overcome. See 15 U.S.C. § 1127 which states:

A mark shall be deemed to be “abandoned” when...the following occurs:

(1) When its use has been discontinued [by the owner] with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. “Use” of a mark means the bona fide use of that mark made in the ordinary course of trade [software] and not made merely to reserve a right in a mark.

Thus, the Huntana, L.L.C. purported assignment did not actually convey trademark rights to Webstat.com, L.L.C. because any trademark rights Huntana, L.L.C. held expired (became abandoned) due to non-use prior to the purported assignment. After December 1, 1997, Huntana, L.L.C. was prohibited by law from engaging in any activities other than winding up and, therefore, did not have the authority to use the “WEBSTAT” mark to do software business in commerce after that date. Accordingly, as a matter of law, the use of the mark by Huntana, L.L.C. ceased on December 1, 1997, and thereafter expired as a result of non-use. 15 U.S.C. § 1127.

E. The Fraud of Webstat.com, L.L.C.

To maintain a federal registration, a trademark owner is required to file a § 8 declaration of use with the U.S. Patent and Trademark Office after the fifth but before the sixth anniversary of the registration date. See 15 U.S.C. § 1058. To achieve the status of incontestability, a § 15 declaration

may also be filed after five years of continuous use. See 15 U.S.C. § 1058. Therefore, in order to preserve the WEBSTAT Reg. No. 2,058,787, its owner was required to file a § 8 declaration of use on or before May 6, 2003. Webstat.com, L.L.C. fraudulently in the name of Huntana, L.L.C. filed a combination declaration under §§ 8 and 15 for Reg. No. 2,058,787, and verified, by declaration under 18 U.S.C. § 1001, that Huntana, L.L.C. was the owner of the mark, that the mark was still in use by Huntana, L.L.C. in commerce, and that the mark had been in continuous use in commerce for five consecutive years following its date of registration. The declaration was signed by Christopher J. Starkey, falsely claiming to be “manager” of non-existing Huntana, L.L.C.. A second fraudulent combined declaration under §§ 8 and 15 was filed by Christopher J. Starkey on behalf of Webstat.com, L.L.C., but was disallowed by the U.S. Trademark Office. The disallowance does not waive the fraud.

Having received the Huntana, L.L.C. assignment only a month earlier, Webstat.com, L.L.C. could not represent to the Patent and Trademark Office that it and Huntana, L.L.C. had continuously used the mark for five consecutive years on software. Even relying on Huntana, L.L.C.’s use, Webstat.com, L.L.C. could not accurately state, with first hand knowledge under oath, that the “WEBSTAT” mark had been used by Huntana, L.L.C. on software in commerce continuously for the five years following the date of registration of the mark. Huntana, L.L.C. was dissolved on December 1, 1997, less than two years after the May 6, 1997, registration of the “WEBSTAT” mark by Huntana, L.L.C. for software. Webstat.com, L.L.C. has never used WEBSTAT on software. After dissolution, Huntana, L.L.C. was prohibited by law from using the mark in commerce because its activities were limited by statute to winding up, not continuing to do business. Therefore, Huntana, L.L.C. did not have the legal capacity to use the mark WEBSTAT to

sell software. Huntana.com has been in a cocoon state since 1999. Therefore, the representation of Webstat.com, L.L.C. in the litigation that the non-existing Huntana, L.L.C. is now an active licensee of Webstat is patently false. As a matter of law, neither Huntana, L.L.C. nor Webstat.com, L.L.C., considered individually and collectively, used the mark continuously for five years following its registration and Webstat.com, L.L.C. has never used it on the goods to which the registration is confined- software. As a result, the combined sections 8 and 15 declarations were false and the law prohibits Webstat.com, L.L.C. from benefitting from its fraudulent preservation of the registration of the mark inasmuch as it has engaged in equitable conduct. *See Stardust Inc. v. Birdsboro Knitting Mills, Inc.*, 119 USPQ 270 (TTAB 1958); *Duffy Mott-Company, Inc. v. Cumberland Packing Company*, 424 F.2d 1095 (CCPA 1970). A false § 8 and § 15 affidavit is invalid and, excluding the consequences of fraud, the legal effect is the same as if an affidavit was not filed at all- i.e. as stated in 15 U.S.C. § 1058:

Duration of registration; cancellation; affidavit of continued use;
notice of Director's action [section 8]

(a) East registration...shall be canceled by the Director for failure to comply with the provisions of subsection (b) of this section, upon the expiration of the following time periods, as applicable:

(1) For registrations issued pursuant to the provisions of this Act, at the end of years following the date of registration

* * * *

(b) During the 1-year-period immediately preceding the end of the applicable time period set forth in subsection (a), the owner of the registration shall pay the prescribed fee and file in the Patent and Trademark Office

(1) An affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and such number of specimens or facsimiles showing current use of the mark as may be required by the Director; or

(2) An affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is not in use in commerce and showing that any such nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

At the time of filing, Webstat.com, L.L.C. could not reasonable believe that either it or Huntana, L.L.C. owned the mark, that the mark was in use on software goods, not services, or that the mark had been in continuous use for five consecutive years on software goods, not services. Webstat.com, L.L.C.'s claim of ownership obviously rests solely upon the purported assignment from Huntana, L.L.C., yet that assignment, as discussed above, was a sham.

The declarations filed by Starkey on behalf of dissolved Huntana, L.L.C. were both false and fraudulent. Huntana, L.L.C. had no authority to file the declarations. While Huntana, L.L.C. assigned its rights in Reg. No. 2,058,787 to Webstat.com, L.L.C., the assignment was a quit-claim only. Huntana, L.L.C. had been dissolved and, therefore, could not have been continuously selling software goods under the name WEBSTAT for almost six years after dissolution, meaning the quit-claim transferred nothing. As such, the statements on behalf of Webstat.com, L.L.C. that it was the owner of the mark, was using the mark in commerce on software, and had together with Huntana, L.L.C. used the mark continuously for five consecutive years since its registration are all false and were known by Starkey to be false when made.

In addition, the declaration, signed by Christopher J. Starkey, falsely claimed Starkey to be

an active manager of dissolved Huntana. Starkey is the same individual who signed the other declaration on behalf of Webstat.com, L.L.C., only this time as “manager” of Webstat.com, L.L.C.. The only conclusion is that Mr. Starkey, on behalf of both Webstat.com, L.L.C. and dissolved Huntana, L.L.C., knowingly submitted patently false combined continuing use declarations under sections 8 and 15. There was no continuing use.

The penalty for violation of 18 U.S.C. § 1001 is fine or imprisonment, or both. The false declarations also preclude Webstat.com, L.L.C. from reliance on Reg. No. 2,058,787. *See Stardust Inc. v. Birdsboro Knitting Mills, Inc.*, 119 USPQ 270 (TTAB 1958) (statement made in section 8 affidavit that the mark was in use was untrue, thus precluding party from relying on the registration for any purpose); *see also Duffy Mott-Company, Inc. v. Cumberland Packing Company*, 424 F.2d 1095 (CCPA 1970) (filing a sworn statement as far from the truth as was that which was filed precluded party from relying on the registration).

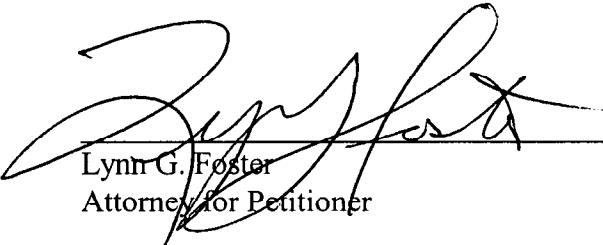
Webstat.com, L.L.C. attempted to fraudulently preserve Reg. No. 2,058,787 by engaging in inequitable and fraudulent conduct. Under the doctrine of unclean hands, it would be unfair and inequitable to permit Webstat.com, L.L.C. to preserve Reg. No. 2,058,787 as valid, given Webstat.com, L.L.C.’s misguided attempt to gain priority rights over Web Tracking. *See Duffy-Mott*, 424 F.2d at 1051.

V. CONCLUSION

For the reasons set forth above, Tracking respectfully asks the TTAB to dismiss grant summary judgment in favor of Tracking..

DATED this 24th day of August, 2004.

LYNN G. FOSTER, L.C.



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08-27-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

**UNITED STATE DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH, STATE OF UTAH**

WEBSTAT.COM, L.L.C., a Utah limited
liability corporation,

Plaintiff,

vs.

WEB TRACKING SERVICES, L.L.C., a
South Carolina limited liability corporation,

Defendant.

**SUPPLEMENTAL DECLARATION
OF OLIVIER GALY**

Case No. 2:03 CV00977

Judge Paul G. Cassell

I, Olivier Galy, pursuant to 28 U.S.C. § 1746, declare the following:

1. I am over twenty-one (21) years of age and have personal knowledge of the facts set forth in this Declaration.

2. By reason of my training and experience, I have gained substantial expertise in the field of internet statistical service and am qualified to present to the Court the factual testimony and expert testimony contained in this Declaration and in my initial Declaration.

3. I am thoroughly familiar with the substantially identical manner in which both the plaintiff and the Defendant provide webstat services in the same market.

4. On April 4, 1997, I registered the domain name "green-acre.com" with Network Solutions and developed a web site for the purpose of advertising real estate in France.

5. On December 10, 1997, I incorporated Green Acres Services, Ltd. located in London ("Green Acres-Ltd.") to manage the commercial aspects of the green-acre.com web site, seeking to best create a British market for real estate in France. I was the sole owner of Green Acres-Ltd.

6. Between June 1997 and February 1998, Green Acres-Ltd. developed a way to measure traffic on the green-acre.com web site. During this time, I realized that this technique could generate internet traffic analysis data (web stats) for other web sites and that this could be marketed as a service to third parties.

7. On February 13, 1998, I caused Green Acres-Ltd. to register the domain name "web-stat.com" with Network Solutions and began offering web site traffic analysis data (web stats) to web site owners.

8. Attached as Exhibit A is a true and correct copy of the Receipt for the registration of web-stat.com on behalf of Green Acres-Ltd. dated February 13, 1998.

9. Webstat.com was registered by the Plaintiff later.

10. On July 2, 1998, I organized Green-Acres Services in France ("Green-Acres-France") as the successor of Green Acres Ltd.: this allowed me to avoid foreign exchange fees since my clients turned out to be mostly French realtors or property owners and wanted to be billed in French francs. I am the sole owner of Green-Acres-France.

11. Between 1998 and 2000, Green-Acres-France operated the web-stat.com business, along with its real estate business.

12. As a result of the growth of the web-stat.com business in the United States, I organized Web Tracking Services, LLC ("Web Tracking") in 2000 to manage the web-stat.com site from the United States. I am the sole owner of Web Tracking.

13. Because the majority of my webstat clients were in the United States, I felt that it would

be better to bill them for my services in U.S. Dollars. Establishing a U.S. company allowed me to open bank accounts in the United States and operate in U.S. dollars.

14. When I organized Web Tracking, I did not transfer ownership of the domain name "web-stat.com" from Green-Acres-France to Web Tracking. Green-Acres-France was and still is the owner of the domain name that Web Tracking uses. Web Tracking was given permission to use web-stat.com by Green-Acres-France.

15. Soon after the creation of the U.S. company, Web Tracking clients who had consulted the Network Solutions Internet domain name database began contacting Web Tracking to ask why web-stat.com was registered to a French company. To put an end to this concern, using the form provided by Network Solutions, I substituted Web Tracking for Green-Acres-France.

16. There was no intent to change ownership, but only a desire to be sensitive to concerns of customers. I believe I changed the Network Solutions' information in the end of the year of 2000, soon after creating Web Tracking Services. I have no idea where the plaintiff's date of 2002 came from.

17. In 2003, the dispute that is the subject of the current litigation arose. Early on I made an offer of settlement through my South Carolina general attorney, to which the Plaintiff never responded. The parties did not engage in extensive negotiations, however.

18. In early November 2003, shortly after I was informed that a Complaint had been filed against Web Tracking but before service of process and without consulting counsel or anyone else. I restored the name of the owner (Green-Acres-France) to the domain name registry to make ownership of web-stat.com completely clear. In my view at the time, I felt, if there was to be a dispute, the ownership of web-stat.com should not be misunderstood.

19. In doing so, I had no intention whatsoever to accomplish any deception. At that time, I knew nothing about jurisdiction and had not yet obtained the benefit of legal counsel.

20. I have no control over the Network Solutions databases. It is impossible for me, and, anyone else as far as I know, to alter the date of first registration for any domain name.

21. As mentioned above, all three companies, Green Acres Ltd., Green-Acres-France, and Web Tracking, belong to me. Green-Acres-France and Web Tracking are both going concerns engaged in different activities. The two companies are registered independently and each has its own accounting, its own clients, and runs its own business.

22. Although I have conducted my web site traffic statistical analysis (webstat) business through different entities since 1998, the fundamental fact remains that I started offering web statistical services to web site owners in the United States under the name "Web-Stat" in February 1998.

23. I have always and exclusively used the name "Web-Stat" and web-stat.com for the sale of statistical services and have never sold software under the name "Web-Stat," nor has the Plaintiff sold software under "webstat" as far as I know.

24. Tracking has thirty-six (36) customers in Utah, all of whom exit Utah to find web-stat.com through their own efforts. Web Tracking has not initiated contact with any potential customers in Utah and has never undertaken marketing efforts targeting potential customers in Utah.

25. Web Tracking does not sell any programming to its clients nor does it offer programs for download to them. In fact, the information contained on web-stat.com does not use the word "download," and downloading does not occur.

26. Instead, after Web Tracking's clients subscribe to Web Tracking's service and receive a confirmation e-mail from Web Tracking, the clients leave Utah to pull information from Web Tracking's server themselves.

27. The confirmation e-mail Web Tracking sends to its clients contains a link to a web page. The client visits the web page, copies the requested code, and pastes it into his web page.

28. This does not constitute "downloading," "sending," "transmitting," or "broadcasting" computer code (including HTML code). Instead, Web Tracking merely makes information available to its clients, which the clients retrieve from Web Tracking's server in Texas.

29. After the client copies the code into its web page, an image of Web Tracking's hit counter will appear on the customer's web site whenever it is accessed.

30. The hit counter itself is created on the fly on Web Tracking's server in Texas. This occurs each time the server receives a request for a hit counter image. Requests for images are made automatically by the browsers employed by visitors to the web sites of Web Tracking's customers.

31. The hit counter does not reside on customers servers or on customers visitors' servers, but on Web Tracking's server in Texas.

32. Our customers' statistics are normally password protected and not publicly available. However, some of Web Tracking's thirty-six (36) Utah clients have chosen in their sole discretion to make their statistics public. Web Tracking offers but does not promote this option, and does not use it as a marketing tool.

33. When customers choose to make their statistics public, the statistics can be accessed by Internet search engines. They may also be made available by the customer on the customer's web sites. They cannot however be access from Web-Stat.com's home page.

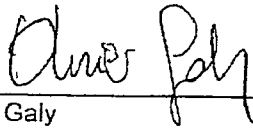
34. Such is the case with the statistical information related to Salt Lake Regional Medical Center attached to the Declaration of Arthur B. Berger at Tab 2. Statistical information for Salt Lake Regional Medical Center cannot be found on or accessed from the web-stat.com home page: the only way to reach such a page is if one looks for it specifically in a search engine. The fact that such a page shows up on certain search engines for certain keywords is completely outside of my control and as such does not reflect an attempt to target the state of Utah. The indexing of the page in any given search engines depends on two factors: first the search engine algorithm, which chooses to index the page in a certain way (I do not control this), second the actual content of the page itself

which only reflects the client's site usage patterns, and obviously I do not control how a client's site is used.

35. As stated above Web Tracking and Webstat are direct competitors, do the same thing in the same market and utilize much the same technology.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 21st day of June, 2004.



Olivier Galy

Exhibit A



**NETWORK
SOLUTIONS™**

Thorpe June
Green-Acres Services Ltd
Standbrook House, 2-5 Old Bond Street
London, none W1X 3TB
United Kingdom

InterNIC Registration Services

Domain Registration/Renewal Invoice

Network Solutions, Inc.
PO Box 17305
Baltimore MD 21297-0525 USA

Invoice Date: 13-Feb-98
Tax ID: 52-1146119

Invoice Number: 546285	Domain Name: WEB-STAT.COM	
Due Date: 15-MAR-1998	Period Covered: 09-FEB-1998 - 09-FEB-2000	Amount Due: \$100.00 US Dollars
<p><i>Thank you for registering the Internet/World Wide Web domain name shown above. Timely receipt of payment will ensure registration services for the period noted above. By this payment, Registrant agrees to the terms and conditions of the current Domain Name Registration Agreement. This payment is non-refundable.</i></p> <p>To Pay By Credit Card or Confirm Payment: We accept all major credit cards 24 hours per day, seven days a week. Call (888) 771-3000 toll-free from the United States, Canada, Puerto Rico and the U.S. Virgin Islands. Outside of these areas, call (402) 496-9798.</p> <p>Or: Go to http://rs.internic.net/pay on the World-Wide Web to use Network Solutions' Secure On-Line Payment System or the First Virtual Internet Payment System.</p> <p>To Pay By Check: Make check payable to Network Solutions, Inc. in US Dollars, drawn on a US Bank, and return the check and payment stub in the enclosed remittance envelope.</p> <p>To Pay By Debit Account: Send e-mail to accounts@internic.net with the domain name, invoice number, and 16-digit Account Number you were assigned when you established your debit account.</p> <p><i>For billing inquiries, send e-mail to billing@internic.net, or call (703) 742-4777 from 7:00am to 9:00pm Eastern Time.</i></p> <p>Remarks: New payment option! You may now pay by credit card 24 hours a day using Network Solutions' On-Line Payment System (http://rs.internic.net/pay).</p> <p>000005462859100008</p> <p>oic-8340 / 9423</p>		

Please retain this portion for your records

*Please detach this stub and return with payment
PLEASE DO NOT BEND OR FOLD STUB*

NETWORK SOLUTIONS, INC.
PO BOX 17305
BALTIMORE, MD 21297-0525 USA



**NETWORK
SOLUTIONS™**

Make check payable to:
Network Solutions, Inc.

Invoice Number: 546285	Due Date: 15-MAR-1998	Amount Enclosed: \$100.00 USD
---------------------------	--------------------------	----------------------------------

Thorpe June
Green-Acres Services Ltd
Standbrook House, 2-5 Old Bond Street
London, none W1X 3TB
United Kingdom

By this payment, Registrant agrees to the terms and conditions of the current Domain Name Registration

000005462859100008

Lynn G. Foster (1105)
LYNN G. FOSTER L.C.
602 East 300 South
Salt Lake City, UT 84102
Telephone: (801) 364-5633
Facsimile: (801) 355-8938

Attorney for Defendant

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

APR 16 2004

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

**UNITED STATE DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH, STATE OF UTAH**

WEBSTAT.COM, L.L.C., a Utah limited
liability corporation,

Plaintiff,

vs.

WEB TRACKING SERVICES, L.L.C., a
South Carolina limited liability corporation,

Defendant.

DECLARATION OF OLIVIER GALY

Case No. 2:03 CV00977

Judge Paul G. Cassell

I, Olivier Galy, declare as follows:

1. I am a citizen of France and reside in South Carolina.
2. I am of age and competent to testify on the matters set forth herein.
3. I have personal knowledge as to the evidence presented herein, unless otherwise

stated, and the matters set forth herein are, to the best of my knowledge, true and accurate.

4. I am, and at all relevant times have been, the manager of the defendant, Web Tracking Services, L.L.C. (Tracking), a company domiciled in South Carolina and have custody and control over the attached exhibits, all of which are authentic.

5. Tracking has had and continues to have essentially no contacts with the state of Utah, does no business in Utah, has made no sales into Utah and has not directed any advertising campaign for customers into the state of Utah.

6. My French company, Green-Acres Services (GreenAcres), registered "web-stat.com" as a domain name on February 9, 1998, see Exhibit "A", without knowledge of the Plaintiff. Green-Acres Services is the current owner of the domain name "web-stat.com" but is not a party to the above-identified litigation.

7. Tracking uses web-stat.com with the consent of Green Acres.

8. Tracking provides access over the internet to certain statistical information, which information is held on servers located in Texas.

9. Both Green Acres and Tracking are small family-owned businesses.

10. On August 11, 1998, about six (6) months after registration of the domain name "Web-stat.com" by Green Acres, some one other than the Plaintiff, registered the domain name "webstat.com." See Exhibit "B," which confirms the registration; but also see Exhibit "H," the Articles of Organization of the Plaintiff showing the plaintiff did not exist until September 22, 1999.

11. On information and belief, on or before August 11, 1998, Plaintiff's predecessor knew of the domain registration of "web-stat.com," by Green Acres and any resulting conflict between "web-stat.com" and "webstat.com."

12. In addition to domain name registration, Green Acres and Tracking have used WEB-STAT as a common law trademark beginning in February, 1998, and continuing to the present time.

13. The plaintiff registered WEBSTAT.COM in the U.S. Trademark Office as services mark Reg. No. 2,395,542 (Exhibit "C"), claiming a date of first use as of January 16, 1999 (nine months before the Plaintiff was formed). Green Acres and Tracking began use of web-stat.com for like services almost a year before January 16, 1999.

14. The plaintiff, on information and belief, knew of the use of WEB-STAT when the plaintiff filed its trademark application on September 17, 1999 (five days before the plaintiff was formed) in the U.S. Trademark Office, which led to the registration attached as Exhibit "C."

15. When the plaintiff filed its trademark application on September 17, 1999, it made the following false oath to the U.S. Trademark Office:

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/services mark sought to be registered, or if the application is being filed under 15 U.S.C. § 1051(b), he/she believes the applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or

in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

DATE

SIGNATURE

TELEPHONE NUMBER

PRINT OR TYPE NAME/POSITION

(Emphasis added.) See attached Exhibit "D," a copy of a mandatory form obtained from the Manual of Trademark Examining Procedure published by the U.S. Trademark Office.

16. The plaintiff has for six years known of and acquiesced in use by Green Acres and Tracking of the name "web-stat.com."

17. As the first user of the WEB-STAT mark, Green Acres and Tracking have service mark rights in WEB-STAT.COM superior to any right claimed by the Plaintiff for internet statistical informational services. From attached Exhibit "C," the plaintiff, under oath, at a point

~~in time when plaintiff did not exist claimed its first date of use of WEBSTAT.COM for the~~

services as January 16, 1999, almost a year after registration and use of "web-stat.com" by Green Acres. See Exhibit "A."

18. While U.S. Trademark Reg. No. 2,058,787 (Exhibit "E") was apparently assigned to the plaintiff by Huntana, L.L.C., that mark pertains to software products in international class 9, not to internet informational services in international class 35, which is the type of services provided by Tracking. Tracking does not produce and does not sell software products, nor, on information and belief, does the plaintiff produce or sell software products under the name

WEBSTAT. A copy of the purported assignment of Reg. No. 2,058,787 is attached as Exhibit "F."

19. Initial and continuing use of the mark of the Exhibit "E" trademark registration on definitive goods is necessary for valid registration and to prevent abandonment of the trademark.

20. On information and belief, the Registrant/Assignor (Huntana, LLC of Missoula, Montana) of the Exhibit "E" registration never initially used WEBSTAT for internet services nor on software goods sold commercially across state lines.

21. On information and belief, the Registrant/Assignor (Huntana) did not continuously use WEBSTAT either for internet services or software goods from the alleged date of first use (May 16, 1995) until the date of the Exhibit "F" purported assignment (either February 21, 2003 or February 26, 2003), as Huntana LLC was dissolved in 1997. See Exhibit "O."

22. In any event, the Exhibit "E" registration does not cover internet services.

23. Green Acres is an indispensable party to any dispute involving WEB-STAT and

personal jurisdiction over Green Acres does not exist in Utah because Green Acres has had absolutely no contacts with the State of Utah.

24. In registering "webstat.com" and "web-stat.com" as domain names, certain agreements were entered with domain name registrar Network Solutions and/or ICANN. Part of each domain name registration agreement comprises a binding commitment to resolve domain name disputes through a form of mandatory arbitration, as defined in the currently applicable Dispute Policy, a copy of which is attached as Exhibit "G."

25. Exhibit "G" characterizes in the preamble of ¶ 4 the arbitration as a "mandatory administrative proceeding," and the arbitrator as a "Provider." Paragraph 4(a)(i) makes it clear that the mandatory proceeding applies to the types of dispute delineated in the complaint here, i.e. where the "domain name [web-stat.com, here] is identical or [allegedly] confusingly similar to a trademark or services mark [WEBSTAT, here] in which the Complainant [Plaintiff, here] [allegedly] has rights."

26. Therefore, on information and belief, this Court has no subject matter jurisdiction over the WEBSTAT/web-stat dispute until such time as the Plaintiff is in compliance with the mandatory alternative dispute resolution requirements of the ICANN DISPUTE POLICY.

27. Tracking is localized in South Carolina, with the aid of servers in Texas, and functions to provide internet informational services there.

28. Tracking has, in my view, an essentially passive website, i.e. "web-stat.com," which is somewhat interactive. As stated above, the "web-stat.com" domain name was registered in February 1998 and has been used continuously since then for said internet informational services.

29. In paragraphs 3-5 of the Complaint, the Plaintiff alleges subject matter jurisdiction, personal jurisdiction and venue as follows.

3. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § § 1131 and 1338.
4. On information and belief, this Court has personal jurisdiction over Defendant by virtue of its transacting and doing business in this state, conducting infringing activity in this state, and causing other tortious injury in this state pursuant to Utah Code Ann. § 78-27-24.

5. On information and belief, venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b), (c).

30. For the reasons stated above, I believe that subject matter jurisdiction is vested in the mandatory arbitration provision of ICANN's DISPUTE POLICY (Exhibit "G"), which deprives this Court of subject matter jurisdiction. Also, since Green Acres, not Tracking, owns "web-stat.com," the proper parties are not before this Court.

31. For the reasons set forth below, I do not believe personal jurisdiction or venue over Tracking is vested in the above-identified Court, nor would personal jurisdiction or venue be proper in this Court as to Green Acres.

32. Tracking has no contacts with the State of Utah to create personal jurisdiction there. Tracking has no substantial, continuous and systematic business in Utah; no office in Utah; no facilities in Utah; no operation in Utah; no sales in Utah; no direct mail, e-mail or internet advertising campaign into Utah; no Utah bank account; no agent, officer, representative, employee or distributor in Utah; no Utah real estate ownership; no property in Utah; no leased real or personal property in Utah; no obligation of any type incurred or obtained in Utah; no Utah telephone number; no one traveling to or through Utah.

33. Tracking processes and engages in all of its business transactions within the boundaries of South Carolina. Some of the functional transactions occur in Texas, where the servers are located.

34. The website "web-stat.com" is hosted in Texas and is maintained from South Carolina. Although it may be accessed from any worldwide location, it is essentially passive in nature, although somewhat interactive. Operation consists of user access, user sign up for an

account, user payment to Tracking for the account. The customer sometimes customizes the purchased services. Thereafter, the account owner accesses the site, logs in and views posted information.

35. Tracking provides an internet website "hit counter" that allows webmaster to study the traffic on their internet website. The hit number appears as an image on the web browser of any third-party accessing the customer's website and indicates the number of times the customer's website has been accessed.

36. When a customer submits an online account form, Tracking responds to the customer's submission by sending the customer a confirming e-mail, along with the "Web-Stat Code."

37. The Web-Stat Code consists of a few lines of HTML and JavaScript code that the client copies and pastes into his or her or its website's HTML.

38. Thereafter, each time the customer's website is accessed by a third-party, the Web-Stat Code instructs the third party's browser to retrieve the hit tracker image from Tracking's servers in Texas and display it on the third-party's browser.

39. Therefore, while the hit counter appears as a part of the customer's website, the image is actually generated by Tracking's programs on its Texas servers, It does not come from the customer's server.

40. The Web-Stat Code does not itself track the number of visits to a customer's website. That is accomplished by programming resident on Tracking's servers in Texas.

41. When a third-party browser's requests the hit counter image, Tracking records on

its servers in Texas the fact that a customer's website has been accessed and maintains a running total along with statistics on the customer's website traffic.

42. The Web-Stat Code performs no processing. All processing is performed on Tracking's servers in Texas.

43. Further, the Web-Stat Code is not a program or software. It simply directs the third-party's browser to connect to Tracking's server to receive the hit counter image.

44. Tracking's customers can check web traffic statistics on Tracking's website by entering a user name and password and requesting a report. Tracking then pulls the requested data from its database and displays it on the customer's browser.

45. Of Tracking's business, all of which is done in South Carolina, only seventy seven hundredth of one percent (0.77%) is with Utah residents who access "web-stat.com" through its Texas servers.

46. Tracking has 7,128 customers of which 36 are in Utah. Thus, fifty one hundredths of one percent (0.50%) of Tracking's customers are in Utah and all became customers through their actions and not by action by Tracking.

47. Tracking does not advertise on radio or television or in any magazine of national or local distribution in Utah. Tracking does not engage in any advertising campaign for customers in Utah.

48. Essentially all of the likely witnesses in this dispute who are known to Tracking are located in South Carolina and France.

49. All of Tracking's evidentiary documents are located either in South Carolina or France.

50. It would be extraordinarily burdensome, unreasonable and unduly inconvenient for this matter to continue in Utah in terms of lack of document and witness availability in Utah.

51. Even if the plaintiff once had rights in WEBSTAT, the plaintiff has failed to enforce such rights and the mark has become generic. See the few of many examples attached as Exhibit "I."

52. Tracking has relied to its prejudice on the plaintiff's silence and lack of objection over the last six (6) years as to Tracking's use of "web-stat.com" and has built a substantial business, customer base and good will in respect to "web-stat" as a consequence of Tracking's business efforts and investments. It would be prejudicial and result in both major and financial injury and irreparable harm if Tracking were not allowed to continue its use of "web-stat.com."

53. Attached hereto, as Exhibit "K," is a copy of federal regulations (37 CFR §§ 2.160 and 2.161) pertaining to the mandatory sixth year continued use affidavit or declaration necessary to preserve a trademark registration.

54. Attached hereto, as Exhibit "L," is a copy of selected portions of the Manual of Trademark Examining Procedure pertaining to the mandatory sixth year continued use affidavit or declaration necessary to preserve a trademark registration.

55. Attached hereto, as Exhibit "M," is a copy of the prosecutorial history of the trademark application including but not limited to two false sixth year declarations filed with the U.S. Trademark Office by which U.S. Trademark Reg. No. 2,058,787 was fraudulently retained in registered status and fraudulently caused to be said to be "incontestible."

56. Attached hereto, as Exhibit "N," is a copy of the prosecutorial history of the trademark application wherein registration (2,395,542) was obtained by distinguishing over the goods of Reg. No. 2,058,787 on 01/26/00 as follows:

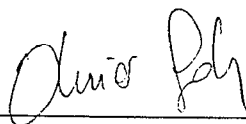
We [the Plaintiff] propose a modification to the recitation of services to read, "Providing instant statistical information to website owners and managers regarding the visitors to their website via a global computer network." This modification then clarifies that WEBSTAT.com is not software, but rather a website providing statistical information and should set it apart from the mark No. 75/007,657 [Reg. No. 2,058,787]. (Emphasis added.)

57. Since WEBSTAT.com and Tracking are in the same business, the distinction made here for WEBSTAT.com necessarily also applies to Tracking, making the assigned Huntana trademark irrelevant here.

58. Attached hereto, as Exhibit "O," are documents obtained from the Secretary of State for Montana showing dissolution and non-existence of Huntana, LLC in 1997.

59. Attached hereto, as Exhibit "P," is the combined §§ 8 and 15 declaration ~~recommended by the U.S. Trademark Office, showing that an existing entity which is the owner~~ and is selling goods under a registered trademark must make the declaration by an officer of the entity.

Under a penalty of perjury, I declare the foregoing to be true, except for the statements on information and belief, which I believe to be true.



Olivier Galy

Date: April 9, 2004

EXHIBIT A

WHOIS SEARCH RESULTS

WHOIS RECORD FOR

web-stat.com

[Back-order this name](#)

Registrant:
Green-Acres Services (WEB-STAT-DOM)
Scion - Beyssac
Marmande 47200
FR

Domain Name: WEB-STAT.COM

Administrative Contact, Technical Contact:
Gille, Colette (239766711) colette.gille@green-acre.com
Green-Acres Services
Scion - Beyssac
Marmande 47200
FR
+33 (0)5 53 76 03 72 fax: +33 (0)5 53 76 03 72

Record expires on 08-Feb-2012.
Record created on 09-Feb-1998.
Database last updated on 17-Mar-2004 16:26:15 EST.

Domain servers in listed order:

NS.RACKSPACE.COM 207.235.16.2
NS2.RACKSPACE.COM 207.71.44.121

[Protect your personal information with Private Registration](#)[SEARCH AGAIN](#)[Actions you can take to protect your WHOIS information](#)[Next Registration Rights](#)

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to Network Solutions (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of Network Solutions. You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. Network Solutions reserves the right to terminate your access to the WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by this policy. Network Solutions reserves the right to modify these terms at any time.

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Help you
business
go place
with the Citi
AAAdvantageSM

citi | A

Web :
SP

EXHIBIT B

WHOIS SEARCH RESULTS**WHOIS RECORD FOR****webstat.com**[Back-order this name](#)

The Data in our WHOIS database is provided by us for information purposes, and to assist persons in obtaining information about or related to a domain name registration record. We do not guarantee its accuracy. By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that, under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); or (2) enable high volume, automated, electronic processes that apply to us, our systems, or our customers. We reserve the right to modify these terms at any time. By submitting this query, you agree to abide by this policy.

Domain: webstat.com

Registrant
WebStat.com, L.L.C.
(null)
chris@CONQUESTCOMP.COM
1372 N. Millpond
Springville, UT 84663 US
+1.1111111111

Administrative
Chris Starkey
Webstat.com LLC
chris@conquestcomp.com
241 N. Main
Springville, UT 84663 US
+1.8014913177
+1.8014371124 (FAX)

Billing
Chris Starkey
Webstat.com LLC
chris@conquestcomp.com
241 N. Main
Springville, UT 84663 US
+1.8014913177
+1.8014371124 (FAX)

Technical
Chris Starkey
Webstat.com LLC
chris@conquestcomp.com
241 N. Main
Springville, UT 84663 US
+1.8014913177
+1.8014371124 (FAX)

Record created on August 11, 1998
Record last updated on January 30, 2004
Record expires on August 10, 2008

Domain Name Servers:
NS1.ESMARTSTART.COM
NS2.ESMARTSTART.COM

**Help your
business
go place
with the Citi®
AAAdvantage®**

citi | **A**

Web
Spa

EXHIBIT C



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2

Trademark Electronic Search System(Tess)

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[Start](#) List At: OR [Jump](#) to record: **Record 3 out of 3**

Check Status

(MARK contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark WEBSTAT.COM

Goods and Services IC 035. US 100 101 102. G & S: PROVIDING INSTANT STATISTICAL INFORMATION TO WEBSITE OWNERS AND MANAGERS REGARDING THE VISITORS TO THEIR WEBSITE VIA A GLOBAL COMPUTER NETWORK. FIRST USE: 19990116. FIRST USE IN COMMERCE: 19990116

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75785027

Filing Date September 17, 1999

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition July 25, 2000

Registration Number 2395542

Registration Date October 17, 2000

Owner (REGISTRANT) Webstat.com L.L.C. Limited Liability Company UTAH 656 S. State
Orem UTAH 84058

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

[PTO Home](#) [Trademark](#) [TESS Home](#) [New User](#) [Structured](#) [Free Form](#) [Keywords List](#) [Sitemap](#) [Help](#) [Privacy](#)

EXHIBIT D

APPENDIX C - FORMS

(Fees indicated on the forms are subject to change.)

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or if the application is being filed under 15 U.S.C. 1051(b), he/she believes the applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

DATE

SIGNATURE

TELEPHONE NUMBER

PRINT OR TYPE NAME AND POSITION

INSTRUCTIONS AND INFORMATION FOR APPLICANT

TO RECEIVE A FILING DATE, THE APPLICATION MUST BE COMPLETED AND SIGNED BY THE APPLICANT AND SUBMITTED ALONG WITH:

1. The prescribed FEE (\$245.00) for each class of goods/services listed in the application;
2. A **DRAWING PAGE** displaying the mark in conformance with 37 CFR 2.52;
3. If the application is based on use of the mark in commerce, **THREE (3) SPECIMENS** (evidence) of the mark as used in commerce for each class of goods/services listed in the application. All three specimens may be the same. Examples of good specimens include: (a) labels showing the mark which are placed on the goods; (b) photographs of the mark as it appears on the goods, (c) brochures or advertisements showing the mark as used in connection with the services.
4. An **APPLICATION WITH DECLARATION** (this form) - The application must be signed in order for the application to receive a filing date. Only the following persons may sign the declaration, depending on the applicant's legal entity: (a) the individual applicant; (b) an officer of the corporate applicant; (c) one general partner of a partnership applicant; (d) all joint applicants.

SEND APPLICATION FORM, DRAWING PAGE, FEE, AND SPECIMENS (IF APPROPRIATE) TO:

Assistant Commissioner for Trademarks
Box New App/Fee
2900 Crystal Drive
Arlington, VA 22202-3513

Additional information concerning the requirements for filing an application is available in a booklet entitled **Basic Facts About Registering a Trademark**, which may be obtained by writing to the above address or by calling: (703) 308-HELP.

EXHIBIT E



UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Electronic Search System(Tess)

TESS was last updated on Tue Mar 9 04:25:14 EST 2004

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Please logout when you are done to release system resources allocated for you.

[Start](#)List At:

OR

[Jump](#)to record: **Record 2 out of 3**[Chart Status](#)

(LATER contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark**WEBSTAT****Goods and Services**

IC 009. US 021 023 026 036 038. G & S: computer software for analyzing and monitoring electronic traffic at specific sites on computer systems. FIRST USE: 19950516. FIRST USE IN COMMERCE: 19950516

Mark Drawing Code**(1) TYPED DRAWING****Serial Number**

75007657

Filing Date

October 19, 1995

Current Filing Basis

1A

Original Filing Basis

1A

Published for Opposition

February 11, 1997

Registration Number

2058787

Registration Date

May 6, 1997

Owner

(REGISTRANT) Huntana LLC LIMITED LIABILITY COMPANY MONTANA 241 N. MAIN ST SPRINGVILLE UTAH 84663

Assignment Recorded

ASSIGNMENT RECORDED

Type of Mark

TRADEMARK

Register

PRINCIPAL

Affidavit Text

SECT 15. SECT 8 (6-YR).

Live/Dead Indicator

LIVE

EXHIBIT F

02/04/2004 10:28 FAX 843 577 7708

FEB-02-2004 MON 03:25 PM RAY QUINNEY & NEBEKER

BARNWELL & WHALEY

FAX NO. 801 328 1350

003/003

P. 03/03


ASSIGNMENT OF TRADEMARK

This agreement entered this 21st day of February 2003 between Matt Hunter, Huntana LLC, of 920 Locust, City of Missoula, State of Montana, herein referred to as "Assignor", and Webstar.com LLC of 241 N. Main, City of Springville, State of Utah, herein referred to as "Assignee".

That Assignor has adopted and is using a mark registered in the United States Patent Office, Registration No. 2058787, dated May 6, 1997 and Assignee is desirous of acquiring such mark and the registration thereof.

That for good and valuable consideration, the receipt of which is hereby acknowledged according to the terms of the attached Bill of Sale, Assignor does hereby assign to Assignee all rights, title and interest in and to said mark, the goodwill of the business symbolized by said mark, along with the registration thereof, the number of which is contained herein.

Dated this 21 day of February 2003.


Matt Hunter

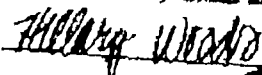
Notary

County of)

State of)

Subscribed and sworn before me on this 21 day of February, 2003 appeared Matt Hunter.

WITNESS my hand and official seal



Notary public

My commission expires



RAY QUINNEY & NEBEKER

Notary Public

My Comm. Expires Dec. 31, 2004

EXHIBIT G

Network Solutions

HELP WHOIS VIEW ORDER | ACCOUNT MAN

HOME	REGISTER A DOMAIN	CREATE A WEB SITE	BUY E-MAIL	PURCHASE HOSTING	PROMOTE YOUR SITE	GROW YOUR BUSINESS	TRANSFER YOUR DOMA
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Dispute Policy

Uniform Domain Name Dispute Resolution Policy (As Approved by ICANN on October 24, 1999)

1. Purpose. This Uniform Domain Name Dispute Resolution Policy (the "Policy") has been adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of a domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at www.icann.org/udrp/udrp-rules-24oct99.htm selected administrative-dispute-resolution service provider's supplemental rules.

2. Your Representations. By applying to register a domain name, or by asking us to maintain or renew a domain name, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates another's rights.

3. Cancellations, Transfers, and Changes. We will cancel, transfer or otherwise make changes to domain name registration in the following circumstances:

a. subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action;

b. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or

c. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by ICANN. (See Paragraph 4(i) below.)

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

4. Mandatory Administrative Proceeding. This Paragraph sets forth the type of disputes for which you are required to use a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution providers listed at www.icann.org/udrp/approved-providers.htm (each, a "Provider").

a. Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party ("complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) you have no rights or legitimate interests in the domain name; and (iii) your domain name has been registered and is being used in bad faith. In the administrative proceeding, the complainant must prove that each of these three elements are present.

b. Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark, or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting it in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service offered on your web site or location.

c. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint. When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on all of the evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4 before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers from the trademark or service mark at issue.

d. Selection of Provider. The complainant shall select the Provider from among those approved by ICANN by submitting a complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in (f).

e. Initiation of Proceeding and Process and Appointment of Administrative Panel. The Rules of Procedure state for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").

f. Consolidation. In the event of multiple disputes between you and a complainant, either you or the complainant may consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointing dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by ICANN.

g. Fees. All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure, in which case all fees will be split evenly by you and the complainant.

h. Our Involvement in Administrative Proceedings. We do not, and will not, participate in the administration or conduct of a proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel.

i. Remedies. The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.

j. Notification and Publication. The Provider shall notify us of any decision made by an Administrative Panel with respect to your domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when the Administrative Panel determines in an exceptional case to redact portions of its decision.

k. Availability of Court Proceedings. The mandatory administrative proceeding requirements set forth in Paragraph 4 shall prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution until such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decision is affirmed, such mandatory administrative proceeding should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation, in the form of a complaint, file-stamped by the clerk of the court, that you have commenced a lawsuit against the complainant in a jurisdiction in which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the jurisdiction of our principal office or of your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure.) If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit and ordering that you do not have the right to continue to use your domain name.

5. All Other Disputes and Litigation. All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved by you and such other party through any court, arbitration or other proceeding that may be available.

6. Our Involvement in Disputes. We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate to take any other action necessary to defend ourselves.

7. Maintaining the Status Quo. We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

8. Transfers During a Dispute.

a. Transfers of a Domain Name to a New Holder. You may not transfer your domain name registration to another holder during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name registration to a holder that is made in violation of this subparagraph.

b. Changing Registrars. You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the dispute policy proceedings commenced against you in accordance with the terms of this Policy. In the event that you transfer a domain name to another registrar during the pendency of a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

9. Policy Modifications. We reserve the right to modify this Policy at any time with the permission of ICANN. We will post any modifications to this Policy at http://www.networksolutions.com/en_US/legal/dispute-policy.htm at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time of the complaint shall apply.

at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to a name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you change in this Policy, your sole remedy is to cancel your domain name registration with us, provided that you will not be entitled of any fees you paid to us. The revised Policy will apply to you until you cancel your domain name registration.

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[Home](#) [Register a Domain](#) [Create a Web Site](#) [Buy E-mail](#) [Purchase Hosting](#) [Promote Your Site](#) [Grow Your Business](#) [Transfer Your Domains](#) [Renew Services](#) [Account Manager](#)

[Review our Privacy Policy](#), [Service Agreement](#), and [Legal Notice](#)

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Dispute Policy

1. Uniform Domain Name Dispute Resolution Policy

(As Approved by ICANN on October 24, 1999)

1. **Purpose.** This Uniform Domain Name Dispute Resolution Policy (the "Policy") has been adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at www.icann.org/udrp/udrp-rules-24oct99.htm, and the selected administrative-dispute-resolution service provider's supplemental rules.

2. **Your Representations.** By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

3. **Cancellations, Transfers, and Changes.** We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

- a. subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action;
- b. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or

c. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by ICANN. (See Paragraph 4(i) and (k) below.)

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

4. **Mandatory Administrative Proceeding.** This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed at www.icann.org/udrp/approved-providers.htm (each, a "Provider").

a. **Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) you have no rights or legitimate interests in respect of the domain name; and (iii) your domain name has been registered and is being used in bad faith. In the administrative proceeding, the complainant must prove that each of these three elements are present.

b. **Evidence of Registration and Use in Bad Faith.** For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

c. **How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint.** When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but

EXHIBIT H

State of Utah
Department of Commerce
Division of Corporations and Commercial Code

I hereby certify that the foregoing has been filed
and approved on the 22nd day of September 1999
in the office of this Division and hereby issue
this Certificate thereof.

Examiner

Date 9/22/99



LORENA P. RUFO
DIVISION DIRECTOR

LC 037738



STATE OF UTAH)

COUNTY OF UTAH)

RECEIVED

SEP 22 1999

Utah Div. of Corp. Comm. Code

ARTICLES OF ORGANIZATION

The undersigned persons do hereby make and execute these Articles of Organization pursuant to the Utah Limited Liability Company Act.

ARTICLE I. NAME The title of this company shall be known, hereafter, as:

WEBSTAT.COM L.L.C.

ARTICLE II. PURPOSE. The purpose for which the company is organized is to

- a) engage in the business of providing online statistical analysis of subscribers Internet website traffic.
- b) to engage in any other lawful business activities for which limited liability companies may be organized pursuant to the Utah Limited Liability Company Act.

ARTICLE III. MANAGEMENT. The management of the company is vested solely in its managers. The name and current residential addresses of the managers who have been designated to participate as management for and of the company are:

Christopher J. Starkey, 609 S. 1840 East, Springville, UT 84663.
Daniel Galbraith, 1372 N. Millpond, Springville, UT 84663.

ARTICLE IV. PRINCIPAL AND REGISTERED OFFICE. The principal and registered office of the company is identified as being:

656 S. State, Orem, UT 84058.

ARTICLE V. REGISTERED AGENT. The name and business address of the registered agent for service of process for the company is:

Daniel Galbraith, 656 S. State, Orem, UT 84058.

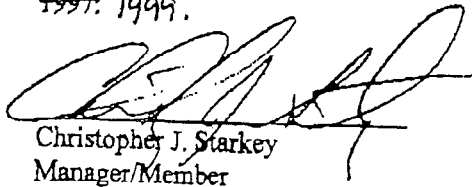
9256020024

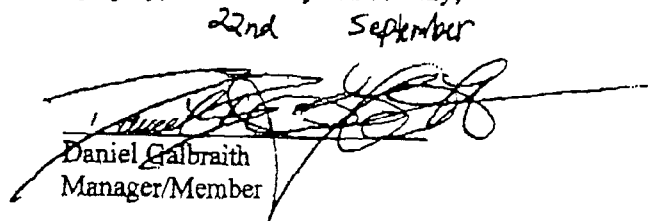
ARTICLE VI. SUBSTITUTED SERVICE OF PROCESS. The Division of Corporations and Commercial Code of the Department of Commerce of the State of Utah is appointed as the agent of this company for service of process if the aforementioned agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence.

ARTICLE VII. DURATION OF COMPANY. If not sooner dissolved or terminated in accordance with the laws of the State of Utah, this company shall exist for a period of no more than ninety-nine (99) years from the date these Articles of Organization are filed.

IN WITNESS WHEREOF the undersigned, being all the managers of the business herein known as **WEBSTAT.COM L.L.C.**, have executed and delivered these Articles of Organization, under the penalties of perjury, this ~~12th~~ day of February, 1997: 1999.

22nd September


Christopher J. Starkey
Manager/Member


Daniel Galbraith
Manager/Member

CONSENT OF REGISTERED AGENT

The undersigned, hereby consents to his appointment as the registered agent for **WEBSTAT.COM L.L.C.**, as described in the foregoing Articles of Organization.

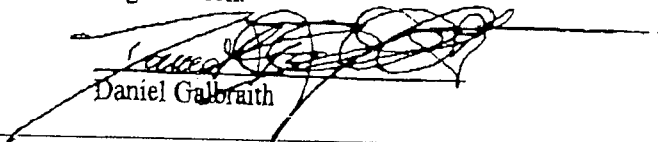

Daniel Galbraith

EXHIBIT I

Why web usage statistics are (worse than) meaningless

Note: This document was originally written in 1995 to explain the stats situation at Cranfield University where I worked at the Cranfield Computer Centre. It was initially intended for local users there, but quickly gained popularity (notoriety?) elsewhere. The content has had little changes and updates since then.

1. There is no discussion of cookie tracking (yet) in this document.
2. I had over-estimated the extent to which caching (and hierarchical caching) would be used.
3. Cranfield University has a proud history of leadership in the web. It was one of the very first UK sites to have a webserver at all (in 1993), was at the forefront of the UK caching effort, and in enabling individual users to publish on the web (early 1994). I am grateful that they permitted what was essentially my personal rant to be hosted so prominently for so long, and have provided a long term redirect to this page.
4. On re-reading my original, I see that this document is a bit hyperbolic. So be it. It is after all an acknowledged rant.

Web usage statistics, such as those produced by programs such as analog cannot be used to make strong inferences about the number of people who have read a website or webpage. Although those who compile these statistics usually try to make this clear, people still insist on misusing them to make overly strong inferences. Attaching meaning to meaningless numbers is worse than not having the numbers at all. When you lack information, it is best to know that you lack the information. Web statistics may give the user a false sense of knowledge which can be worse than being knowingly ignorant.

A useful analogy is with putting up advertising posters. You will never really know how many people have noticed them or read them.

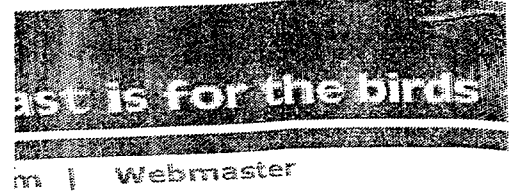
It is not enough to say that the statistics should be taken with a grain of salt; they should be taken with a salt lick. If you want to understand why no inference about the number of people reading this pages can be made from web statistics read on. Otherwise, you may wish to just trust that statement or may wish to skip to the section on Quick Questions and Answers.

What web stats are really good for?

Web stats are useful for web administrators to get a sense of the actual load on the server. This is useful for diagnostics and planning, and for detecting unusual behaviour that may require planning action. The goal of the administrator is to keep the server running smoothly under expected loads, while improving the speed and reliability of obtaining documents from the site. The best way to achieve this is to have browsers retrieve documents from places closer to where they will be used (and even from memory) than to get them from the disk on the server. It is only when the file is retrieved from the server that the server has the ability to keep track of the access.

Caching:

Essential for the web and disastrous for statistics



reliable invisible web tracker,
led web stats. Insert a simple
be able to analyse and monitor

You?

loading and Reliable Service

e
ch detailed visitor tracking and

, first-time and returning visitors
ed and what ones don't
and watch in real-time as they

keywords are people using to find

What navigation paths, referring
ersions?

e them all from one account
vered to you and your clients
aff or clients

o install or huge log files to parse
ur visitors are finding your site?
have a lot of international visitors?
do you get?

osite optimized for your visitors?
and it's all **FREE!**

c at what our members are saying and
efore you decide to sign up for free.

's different about you? Well we're on a
ome the best web tracker available to
world over, so we need your help. But
ry.

we fully intend to stay free. We keep our
our money from advertising when you log
sitors to your website. If your website is
s a month, then you are outside this free
lding the code to your website and we'll be
n excellent price. You'll get real value for

StatCounter**The Alabama Gulf Coast is for the birds**

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Username:

Password:

☐ remember me

LOGIN

Got a website? Get a StatCounter! A free yet reliable [invisible web tracker](#), highly configurable [hit counter](#) and real-time detailed [web stats](#). Insert a simple piece of our code on your web page and you will be able to analyse and monitor all the visitors to your website in real-time!

What Does StatCounter Have To Offer You?

- [Completely Free](#), [Fast](#), [Responsive](#), [Quick loading](#) and [Reliable Service](#)
- [Invisible Tracking](#) - no ads on your website
- Accurate real-time website statistics with detailed visitor tracking and analysis
- Detailed breakdown of [pageloads](#), [unique](#), first-time and [returning](#) visitors
- Popular Pages - what webpages get viewed and what ones don't
- [Zoom in on your visitors' locations](#) and watch in real-time as they navigate through your website!
- Search Engine/Keyword Analysis - what keywords are people using to find your site?
- [Drill Down - Incredibly Powerful Tool](#). What navigation paths, referring links and keywords are leading to conversions?
- Do you have multiple websites? Manage them all from one account
- Configure email stat reports to be delivered to you and your clients
- Grant individual user access to your staff or clients
- Enable public or private website stats
- Incredibly easy to use - no software to install or huge log files to parse
- Referring links - do you know how your visitors are finding your site?
- Country Stats - does your website have a lot of international visitors? What percentage of domestic visitors do you get?
- Browser/Resolution Info - is your website optimized for your visitors?
- And that's just to whet your appetite and it's all **FREE!**

[forgot password?](#)
[trouble logging?](#)

ADVERTISER

Webmaster Tools
 Cheap Web Hosting
 Website Optimization
 Website Promotion
 Search Engine Submit
 Free Web Hosting
 Web Hosting
 Buy Website Visitors
 CWI hosting Java JSP
 Affordable Web Design
 Internet Marketing
 Top 10 Ranking
 E-commerce Design
 Website Appraisal
 GetAFreelancer.com
 Be #1 on Google/Yahoo
 Website Hosting

COMMUNITY

Geo-Location Dec 30
 Happy Holidays! Dec 13
 News
 User Forum

LINKS

The Free Site
 Lookup IP Address
 Free JavaScripts
 321 Webmaster

Don't just take our word for it. Take a look at [what our members are saying](#) and try out the [web statistics demo](#) yourself before you decide to [sign up for free](#).

Not another counter service?

Why should I choose StatCounter? What's different about you? Well we're on a mission. Yes we're on a mission to become the best web tracker available to webmasters and website owners this world over, so we need your help. But here's a few other reasons to give us a try.

Completely Free Service

We're free, we always have been, and we fully intend to stay free. We keep our overheads to a minimum - then make our money from advertising when you log onto StatCounter to see the latest visitors to your website. If your website is getting more than 250,000 pageloads a month, then you are outside this free model. Get in touch with us before adding the code to your website and we'll be able to offer you better stats for an excellent price. You'll get real value for money.

Ads by GoogleWebAbacus webanalytics

Understand your
online customers.
Click here to learn
how.

www.webabacus.com

Web Site Stats

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Usage, Paths,
Keywords,
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www.DeepMetrix.com

Free WebAnalytics Guide

HitBox - Web
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Real-time.
www.websidestory.com

Professional Web
Stats

Professional
features web stats
starting at €
25/year! Free trial.
www.tetigi.com

Member Comments

It's easy to read
testimonials with a cynical
viewpoint, but for once I
have to agree; this service
is rather exceptional. I
first went looking for an
alternative hit counter
because my hosting
service was reporting
some rather bizarre
statistics that flew in the
face of what I'd
researched (apparently
everyone out there in
Cyber-world uses
Netscape 4.0).

So onto Google I went,
and stumbled across

We're currently testing even more advanced tracking services, which won't be commercially viable as a free service. These new tracking services will be offered on top of the free service. We still plan to keep adding as many features to the free service that can be sustained.

Fast, Responsive, Quick loading Service

Why did I start StatCounter back in 1999? I had been using a counter service that was loading slower and slower every single day. I spent a long time getting my website to load quickly, and all my efforts were destroyed by a slow loading counter service. So what did I do? I started my own! We share the load across an ever expanding cluster of dedicated servers to ensure your counter is kept loading quickly - it's usually instant. We're not perfect though, but if we get a report of a slow loading counter, we'll do whatever it takes to get it sorted and fast.

Reliable Service

What's almost the worst thing to see on a website? Well most people seem to have finally gotten the message about the eyesores that are blinking tags, flashing backgrounds and the dreaded scrolling marquee tag. After that, one of the worst things to see is a broken image link. This is another irritating phenomenon of counter services. They go boom and bust very quickly and your left with a dangling gaping big broken image hole on your website. Thanks very much.

We've been providing this service since 1999. We've been through a lot of blood, sweat and tears, agony and ecstasy, misery and joy, heartache and ... well you get the picture. It's been a long journey - 5 years - 3 re-launches - over a billion hits tracked. We've been through the rough times, we've learned from our early mistakes. We've gotten very experienced administering web applications that have to take an extreme load. It has been rock solid since the last re-launch. When the demand increases we just add more dedicated servers to the pool.

We're on a mission to become the best web tracker available to webmasters and website owners - we know this is a tough business, but we're here to stay. Good times and bad.

Invisible Tracking

Have you experienced the *'lets provide a free counter service for a few months then whack them with a charge without any warning'*, followed closely by the *'free accounts are now worthless we'll just plaster their website with intrusive ads and pop-ups'*. This is yet another annoying trend that I've noticed about counter services.

You've spent a long time developing your website, now you want to know who is visiting it. Fair enough. But does that mean you have to subject your visitors to ugly advertising from your counter service? Well we certainly don't believe so - with StatCounter you get what is probably the most configurable free hit counter available in the world, as well as the option to go completely invisible. There are absolutely no ads on your website!

We Listen To Your Needs

There's one reason, and one reason only that StatCounter has become so

StatCounter. It was free, it said (*but only if you want the absolute minimum of stats, I thought*). It could be invisible, it said (*but only if you pay a premium, I thought*). It didn't asphixiate your site with pop-up windows, it said (*yeah right, I thought, where's the catch?*) Well it turned out I was **wrong** and that all the testimonials were quite right.

At a time when the Internet is getting cynical and over-commercialised and is being villified by the media, it's so refreshing to see a site that just wants to deliver a free **and** high-quality product. Thank you, StatCounter, I stand corrected!

Carmen, North Wales -
11th Feb 2004

[read more comments](#)

popular. That reason is you, and other people like you who have become StatCounter members. You are our livelihood. We survive from your custom and your word of mouth. Please keep recommending our services to your friends and colleagues.

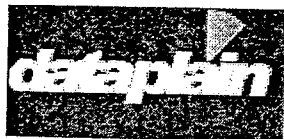
We are always listening to your needs. We are consistently trying to improve the service and add more features. We are fast becoming the ultimate webmaster and marketing tool and it's all thanks to you. Take a look at [what our members are saying](#).

If you're still not sure if StatCounter is for you, just have a look in the [forum](#), and ask our members a question about the service. They'll bring you up to speed on whatever you need to know. If you've any suggestions to improve the service, be sure to post them in the forum as well.

Final Word

We could go on, and on and on about our service ... seriously we could. Did you get that impression? But there's only one way to find out if we really are what you are looking for. [Register](#) for your [free account](#) right now. You could be viewing an in-depth, real-time analysis of the visitors to your website in the next few minutes! Remember, it's free. What could be better than that!?

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WEB STATS AFFILIATE PRO

DEMONSTRATION | COMPARE PLANS | PRICING | SIGN UP

HOME | LOG IN | PRIVACY INFO | CONTACT

DATAPLAIN WEB STATS

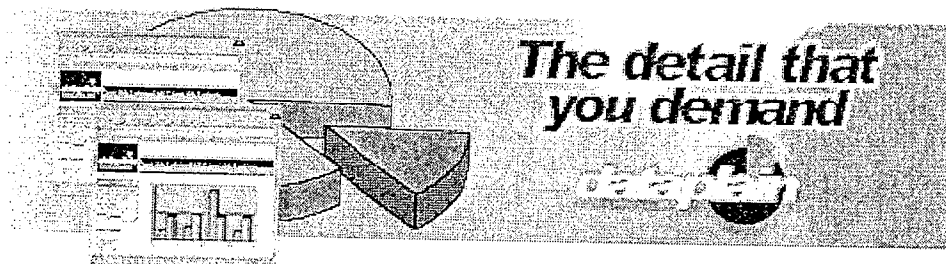
COMPARE PLANS

PRICING

INSTALLATION

COUNTER OPTIONS

SIGN UP



When it comes to web stats, no one beats Dataplain. Dataplain gives you the reports you need to understand your web traffic and respond accordingly. Plus, Dataplain is easy to install and is completely invisible on your website. To learn more about Dataplain:

[SEE A DEMONSTRATION](#)

[SEE A PLAN COMPARISON](#)

[SEE PRICING](#)

↓ (did not prime title)

Login to your account:

<input type="text"/>	Account #
<input type="text"/>	Password
<input type="button" value="Get My Stats!"/>	

Counters are easy to set up. Server logs provide in-depth analysis of your traffic. Ever wish you could have the best of both worlds?

STAT TRAX can provide you with the information that you need. The kind you can use to easily identify the makeup and size of your audience.

- What percentage of your visitors are coming from the United Kingdom?
- How many people view your pages between 1 and 4 in the morning?
- Are you drawing a bigger crowd on weekends or work days?
- What is the ratio of visitors from commercial locations to educational institutions that view your pages?

*These are the questions that **STAT TRAX** will answer for you!*

We also offer the convenience of letting you pick which reports you want, how you want them to look, and how often you would wish to receive them, and we'll email them to you on a regular basis at no extra charge! *Never before has tracking your web site been so easy!*

You can sign up for your **free trial** right now, and within minutes you can start tracking your entire Web site. There is no software to install. There is no begging your Internet Service Provider for access to private log files.

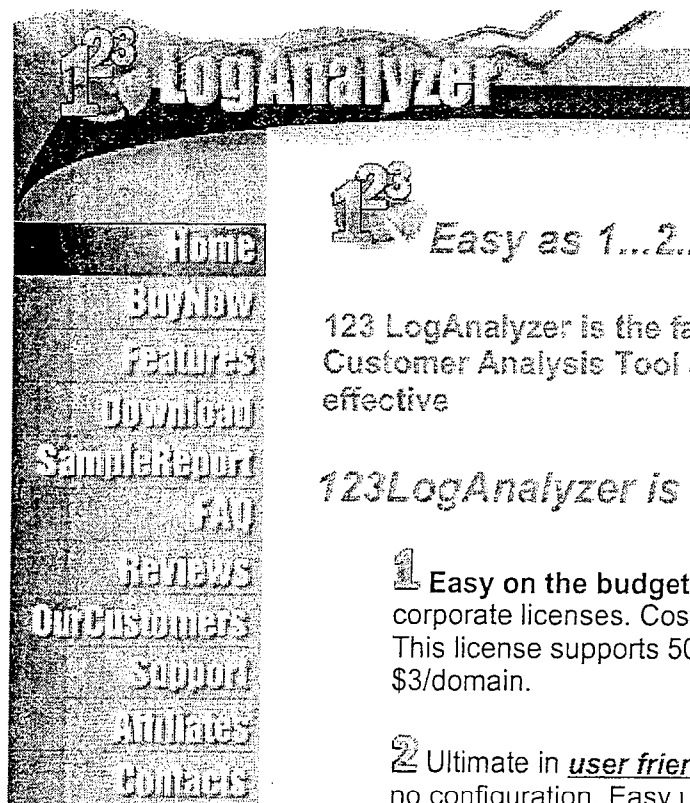
Just fill out our registration form and make a small modification to your HTML files. Your pages will be automatically registered in our databases. That's it!

If there is something that you still have questions about, don't hesitate to drop us a line at statrax@statrax.com.

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- Privacy Statement -

site design by mirror images



123 Easy as 1...2...3

123 LogAnalyzer is the fastest and most powerful Web Customer Analysis Tool available and by far, the most cost effective

123LogAnalyzer is Easy as:

1 Easy on the budget. \$149.95 for 10 corporate licenses. Cost/user = \$14.99. This license supports 50 domains or \$3/domain.

2 Ultimate in user friendly – no set up, no configuration. Easy user interface

3 Speed! 10-20 times faster than our largest competitor

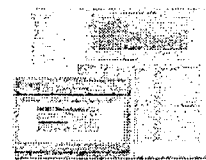
123LogAnalyzer is Easy as:

1 Features and functionality

• Unique to 123LogAnalyzer:

- Report by cities/states/countries
- 123 can analyze .zip and .gz (Unix) compressed log files on the fly
- Supports logs from server farms (or load balanced servers) without having to upgrade license.

2 Marketing and E-commerce – drill down deep in to your customer's behavior



VERSION 3.1

Free Trial

COMPATIBLE
OPERATING
SYSTEMS:



● [Data mining](#)

● [Customized reports](#)

● [Marketing/Advertising ROI](#)

3 [More...](#)

● [Security](#): track unwelcomed visitors who were abusing your web site

● [How does 123LogAnalyzer measure up to the competition?](#)
Check out the [Comparison Chart](#)

● [Free technical support via Email](#)

So Easy to Use...

123LogAnalyzer has an extremely easy to use interface that requires no technical knowledge whatsoever. The installation takes less than 10 seconds, and even a non-technical novice can get 123LogAnalyzer up-and-running in minutes.

▲ [Return to top](#)

Lightning Fast ...

123LogAnalyzer is the fastest web traffic analyzer in the market, allowing you to analyze your huge log files in seconds, with similar competing products often taking many times longer.

▲ [Return to top](#)

Powerful datamining tool...

123LogAnalyzer lets you find gold in your web logs. 123LogAnalyzer has a set of [powerful datamining filters](#), allowing you to do indepth analysis on your web site visitors' behavior.

▲ [Return to top](#)

Save Disk Space, and Save Time...

123LogAnalyzer can analyze commonly-used ZIP

and GZ compressed log files without having to first extract them to your hard drive, so you save disk space and downloading time!

 [Return to top](#)

Accurate Visitor Geographical Statistics...

Other log analysis softwares (such as webalizer, webtrends log analyzer...) use "reverse DNS lookup" technology to generate geographical information, which is both time consuming and highly inaccurate. 123Loganalyzer uses an internal IP mapping technology that identifies a visitor's geographical region by their IP address. This unique IP mapping technology allows 123Loganalyzer to produce much more accurate visitor geographical statistics at blindingly fast speeds.

 [Return to top](#)

Get a Better Ranking in Search Engines...

123LogAnalyzer lets you see how people use search engines to find your web site. The search engine performance report lets you know which keywords and phrases people are using to find your web site in each search engine, which search engines produce more traffic, and which still need more work. These reports give you the information you need to optimize your web pages and adjust your marketing strategies to get more traffic from the search engines. More visitors mean more customers; so stop trying to guess!

 [Return to top](#)

Track Unwelcomed Visitors Who were Abusing Your Web Site...

123LogAnalyzer even provides a detailed visitor/IP report broken down by access time, hits and bandwidth usage. You can also find out who/which organization owns specific IP addresses in the report.

 [Return to top](#)

Make Your Web Site Perfect...

123LogAnalyzer even gives you a detailed report

about broken links and page errors in your site, to help your website looking clean and professional.

 [Return to top](#)


Ordering 123LogAnalyzer

For as little as US\$129.95, the fastest and most powerful web site analyzing software can be yours - [See 123LogAnalyzer Pricing Detail!](#)

 [Return to top](#)

No Hidden Costs...

When you decide to buy 123LogAnalyzer, there are no hidden costs. You simply pay a One-Time fee for buying the 123LogAnalyzer license. No monthly fees, no annual fees, and no hidden charges. Minor software updates are also supplied to all customers at no charge until the next major upgrade. See [123 LogAnalyzer Pricing Detail!](#)

 [Return to top](#)

You have Free Technical Support...

We offer Free Technical Support for 123LogAnalyzer. You can either send email to Support@123LogAnalyzer.com or fax to ZY Computing, Inc (1-408-273-6572) or write mail to: ZY Computing, Inc, 111 North Market Street, Suite 614, San Jose, CA 95113, USA

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MegaStats.com
LIVE WEB STATS

[HOME](#)

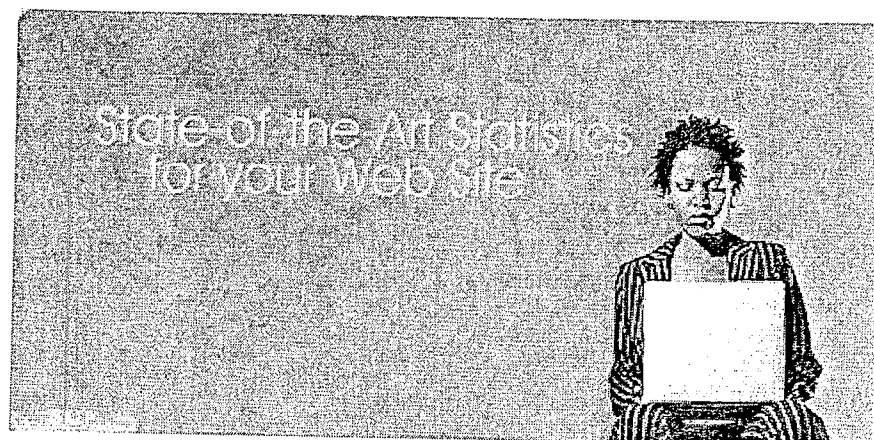
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MegaStats.com provides comprehensive live website statistics service that will help your online business to succeed.

MegaStats detected that you are:
located in **Utah, United States**
using **Xmission**

OUR SPECIAL FEATURE

DomainStats™ is one of our newest tools. It is mainly intended for webmasters who have many domains that are all being tracked at once.

DomainStats™ allows you see uniques and pageviews of any particular domain within a selected date range. Moreover, you will be able to assign a password to each report and give the link (with the password) to a business partner, in cases where you need to show domain stats without having to show other detailed stats of your other domains.

This feature is a **must** for domain brokers.

OUR SPECIAL OFFER

The stats give you the ability to check how many visitors come to your website daily and monthly, as well as where they are coming from. This will provide you with a detailed analysis including traffic reports, marketing reports, and visitor profile reports, navigation reports and much more. It will enable you to maximize your site design and marketing

FREE

◆ MegaStats Free
Live stats, and more
any other site, including
reports

PRO

◆ MegaStats Pro
Professional web site
invisible counter

TRIAL

◆ MegaStats Pro Trial
Two weeks of free
access to MegaStats

OUR DETAILS INFORMATION

◆ Traffic

See Hourly, Daily, Monthly visitors and page views, as well as hourly and daily averages. User friendly traffic summary and Calendar View available.

◆ Marketing

Find out what sites are linked to you and how much traffic they are sending. Referring pages, domains, Search Engines and Keywords.

◆ Navigation

Learn about your visitors' paths, pages per visit, duration per visit, visited pages, domains, domain stats, entry and exit pages, and more...

◆ Demographics

See what countries, states, cities, ISPs your visitors are coming from, their language

efforts to increase sales from your site.

and timezone info.

OUR POSSIBILITY ✖

MegaStats.com will track your website's statistics around the clock and you can check them from anywhere at any time using a web browser. Simply sign up for a **free two-week trial**, insert a piece of code in your page, and you are on your way. You will then be able to login to your account and receive a detailed, real-time statistical analysis of your web page.

✖ Visitor Profiles


Find out about your recent visitors, frequent visitors details, browser/os, javascripts, cookies, and mu more info.

MegaStats.com

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Track and analyze the performance of all of your websites, search engine results, and orders. You're always with the leader in true real-time statistics.

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KNOW YOUR VISITORS



Monitor the activities of **every** individual visitor to your website, complete graphical web stats, and visitor system information. [details>](#)

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Number One Real Time Intelligence Web Analytics

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OneStat Pro

Welcome to OneStat Pro, the ultimate web stats software for small and mid-sized businesses.

OneStat Pro offers a much more accurate web stats technology as the log file analysis. OneStat web stats is browser based, doesn't require any hardware and provides next-generation measurements that are up to 100% more accurate than log file analysis.

OneStat Pro web stats offers benefits such as:

- Real-time web stats
- Continually added reports & software updates
- No hardware required, OneStat host all the software for you
- Scalable and secure web stats software
- No log files to process
- Excellent customer support service & helpdesk

OneStat Pro delivers detailed & professional answers you need based on standard time reports:

- Who and how many people are visiting your website?
- Where do your visitors come from?
- Which pages do they look at most?
- What type of information are they interested in?
- What hours, days, weeks, months, quarters and years are they particularly active?
- What kind of technology do they use to view your website?
- From which URLs do people come to visit your website?
- And much more.

With OneStat Pro web stats you can measure unlimited number of pages of your website. It is password protected, no banners, invisible and competitive priced.

OneStat.com is the number one provider of real-time web stats software in the world. Our superior technology powers thousands of websites in different countries all over the world. With our accurate, detailed & reliable reports we will be able to answer all your questions about visitor behaviour, site performance and retention.

Sign up for a free four-week trial and see what OneStat Pro can do for your website!

You can get OneStat Pro website stats by signing up immediately, a free 4 week trial or to upgrade from OneStat Lite & Basic without losing any data.

If you are a website design agency, hosting company or an internet consultant and you want to sell our web stats to your clients, you can also participate in our partner program. Click here for more information.

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Content

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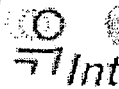
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StatCounter


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Username:

Password:

☐ remember me

LOGIN

Free Web Stats

What web stats exactly does StatCounter provide?

StatCounter offers a plethora of various web stats that we are consistently improving. If there is a stat you would like to see developed and included be sure it in our [feature request forum](#).

[forgot password?](#)
[trouble logging?](#)

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 E-commerce Design
 Website Appraisal
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COMMUNITY

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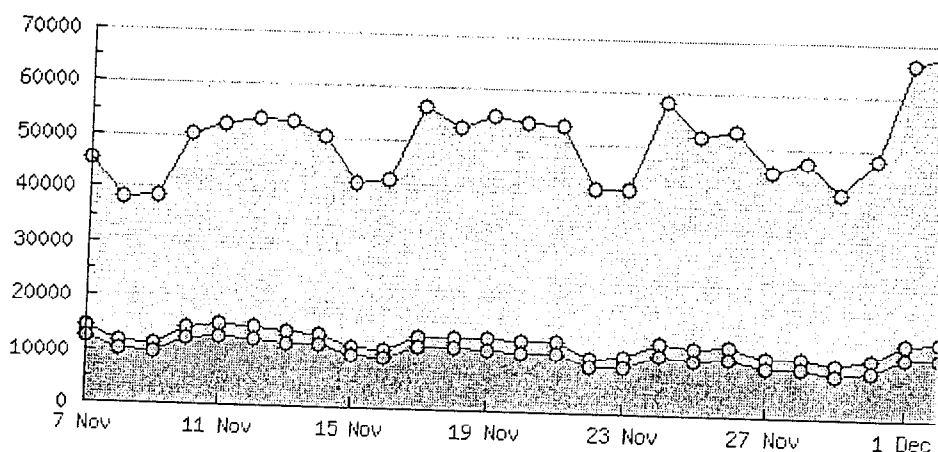
LINKS

The Free Site
 Lookup IP Address
 Free JavaScripts
 321 Webmaster

At the moment StatCounter offers a breakdown of your current unique, returning visitors over the lifetime of your website. We also offer browser, resolution, operating country, search engine, keyword, referring link, drill down and magnify visitor activity reporting. The easiest way is to simply click the 'demo' in the main navigation bar of the page and see for yourself.

Of course the only way to experience your own web stats in real-time is to register [free account](#).

Summary (StatCounter.com)



07 Nov 2003 - 07 Dec 2003

Last 30 Days Set Period Export I

Date	Page Loads	Unique Visitors	First Time Visi
7th December 2003	23,972	5,105	

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Sorry, no results were found containing "www.realtimewebstats.com"

SEARCH TIPS

- 1) Check your spelling.** Are the words in your query spelled correctly?
- 2) Try using synonyms.** Maybe the site you're looking for uses slightly different words, like "film" instead of "movie".
- 3) Make your search more general.** For example, instead of using specific product names, try using the generic product category.

For more tips and answers to frequently asked questions, check out [MSN Search Help](#)

[Shopping Results on MSN](#)[STOP MORE SPAM with MSN Internet Software](#)

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We can't find "www.secure.mindspring.net/acct-mgmt/webstats.html"

You can try again by typing the URL in the address bar above.
Or, search the Web:

Search

Go to [MSN Search](#) to see complete results for "www.secure.mindspring.net/acct-mgmt/webstats.html".

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africaresource.com

African Educational Web Portal

Featured Artist

E. J. Montgomery



Photo of artist, 2002

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[ProudFlesh](#) : New Afrikan Journal of Culture, Politics and Consciousness

[W.A.R](#): West Africa Review

[IJELE](#): Art eJournal of the African World

Yemisi Speaks



New feature

Yemisi's corner is a new section on africaresource.com. It features opinion and reflection pieces of and about Africa. Check it out [here>>](#)

Ma

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Announcement

ISAPS: 10th Annual
April 2-4, 2004 at the
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Jamaica. Click [here](#) for
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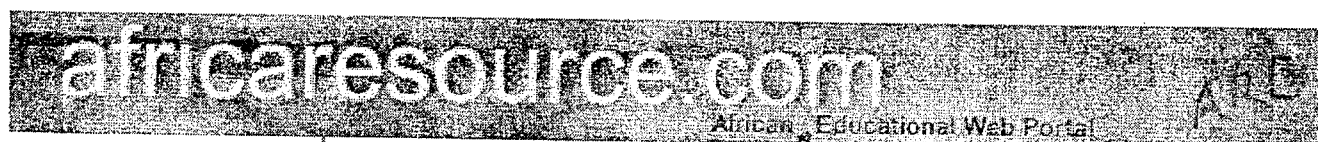


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**Sample Web Stats****Africaresource.com sample web traffic****W.A.R**

>West Africa Review

Africaresource.com Website Statistics and Information

Sample of Website Traffic

Compiled by the **Webmaster****IJELE**

>Art eJournal of the African World

We are happy to learn that we are linked to numerous universities and organization around the world. We are also encouraged by the positive feedback we have received and continue to receive from our visitors. We thank all our contributors whose efforts have enabled us to bring top quality information on Africa to the Internet. Thanks to your efforts, the daily average visitors to Africa Resource Center website has gone from 4,000 to 7,000 to 11,000 - 14,000 visitors a day. On occasions when new issues of our journal are published our weekly average has exceeded 80,000 visitors. Below is a sample of our website statistics, linked colleges and universities, organization, country trails and journal recognition.

JENDA

>A Journal of Culture and African Women Studies

African Philosophy

>Journal on African Philosophy

Art Gallery

>Art works

A random sampling shows that the journals of Africa Resource Center are in the database of some top universities around the United States and the World.

Bibliolist

>Bibliographies

Linked University | Linked Organization | Country | Scout Report**Books**

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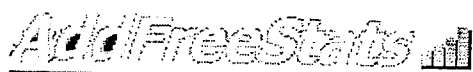


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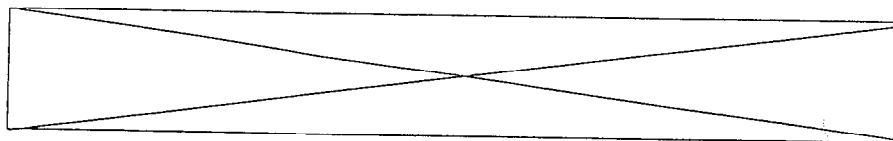
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Update December 21, 2003.

We have added a free 24/7 website monitoring service called HTTPWhere.com. Please join for free..no obligations and no fees.



Update Sept 21, 2003.

We have been alerted to an issue with people having the IP address 213.138.98.81 in their stats. We have identified this as a script bug and have modified the code to properly pull in the REMOTE HOST properly. Although we cannot change old data, you should see the correct information coming in now. Please let us know if this is still an issue. Email admin@516homes.com

Update Sept 15, 2003.

We are just about ready to launch our two new free stats services: **Free-Stats-Hosting.com** - Affordable website hosting and **Free-Stats-Traffic.com** - Quality Website visitor Traffic. These two free stats services will help your websites and counters! We have not completed the websites but the backend work is complete. We hope to officially launch Sept 20, 2003. If anyone has any feedback or interest in either of these services, please email us today and receive special pre-launch discounts. Email admin@516homes.com

Update August 15, 2003.

We upgraded RAM to 2 GB on this Dual XEON Free Stats web counter server to help will speed,

GENERAL POLL: Would anyone want Free-Stats to change to another script? We are debating either dissolving this script and moving to a new one or modifying this one extensively to update the features. If anyone has opinions, please email us at admin@516homes.com. Your comments and opinions WILL decide the future of this service. Thank you.

Update June 30, 2003.

We hope you have been enjoying our free service here at Free-Stats.com. We have moved to a very expensive server and would like to ask each member to donate \$3 per month to help us if possible. There is no obligation....just a friendly way to ask for some help. If you would like to help us, you can click on one of the buttons below. One button is for PayPal and will deduct \$3 per month. The other button will be for 2Checkout for



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EXHIBIT J

§ 1058 Duration of registration; cancellation; affidavit of continued use; notice of Director's action [Section

(a) Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director for failure to comply with the provisions of subsection (b) of this section, upon the expiration of the following time periods, as applicable:

(1) For registrations issued pursuant to the provisions of this Act, at the end of 6 years following the date of registration.

(2) For registrations published under the provisions of section 12(c), at the end of 6 years following the date of publication under such section.

(3) For all registrations, at the end of each successive 10-year period following the date of registration.

(b) During the 1-year period immediately preceding the end of the applicable time period set forth in subsection (a), the owner of the registration shall pay the prescribed fee and file in the Patent and Trademark Office—

(1) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and such number of specimens or facsimiles showing current use of the mark as may be required by the Director; or

(2) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is not in use in commerce and showing that any such nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

(c)(1) The owner of the registration may make the submissions required under this section within a grace period of 6 months after the end of the applicable time period set forth in subsection (a). Such submission is required to be accompanied by a surcharge prescribed by the Director.

(2) If any submission filed under this section is deficient, the deficiency may be corrected after the statutory time period and within the time prescribed after notification of the deficiency. Such submission is required to be accompanied by a surcharge prescribed by the Director.

(d) Special notice of the requirement for affidavits under this section shall be attached to each certificate of registration and notice of publication under section 12(c).

(e) The Director shall notify any owner who files 1 of the affidavits required by this section of the Director's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

(f) If the registrant is not domiciled in the United States, the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process—

15 U.S.C. § 1065

§ 1065 Incontestability of right to use mark under certain conditions
[Section 15]

Except on a ground for which application to cancel may be filed at any time under paragraphs (3) and (5) of section 14 [§1064] of this Act, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of registration under this Act of such registered mark, the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided, That—*

- (1) there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and
- (2) there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of; and
- (3) an affidavit is filed with the Director within one year after the expiration of any such five-year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such five consecutive years and is still in use in commerce, and the other matters specified in paragraphs (1) and (2) of this section; and
- (4) no incontestable right shall be acquired in a mark which is the generic name for the goods or services or a portion thereof, for which it is registered.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this Act shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Director within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 12 [§1062] of this Act.

The Director shall notify any registrant who files the above-prescribed affidavit of the filing thereof.

EXHIBIT K

§ 2.153

Publication requirements.

A registrant of a mark registered under the provisions of the Acts of 1881 or 1905 may at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit or declaration in accordance with §2.20 setting forth those goods stated in the registration on which said mark is in use in commerce, specifying the nature of such commerce, and stating that the registrant claims the benefits of the Trademark Act of 1946.

[31 FR 5262, Apr. 1, 1966]

§ 2.154

Publication in Official Gazette.

A notice of the claim of benefits under the Act of 1946 and a reproduction of the mark will then be published in the *Official Gazette* as soon as practicable. The published mark will retain its original registration number.

§ 2.155

Notice of publication.

The Office will send the registrant a notice of publication of the mark and of the requirement for filing the affidavit or declaration required by section 8 of the Act.

[64 FR 48924, Sept. 8, 1999]

§ 2.156

Not subject to opposition; subject to cancellation.

The published mark is not subject to opposition, but is subject to petitions to cancel as specified in §2.111 and to cancellation for failure to file the affidavit or declaration required by section 8 of the Act.

[64 FR 48924, Sept. 8, 1999]

Reregistration of Marks Registered Under Prior Acts

§ 2.158

Reregistration of marks registered under Acts of 1881, 1905, and 1920.

Trademarks registered under the Act of 1881, the Act of 1905 or the Act of 1920 may be reregistered under the Act of 1946, either on the Principal Register, if eligible, or on the Supplemental Register, but a new complete application for registration must be filed complying with the rules relating thereto, and such application will be subject to examination and other proceedings in the same manner as other applications filed under the Act of 1946. See §2.26 for use of old drawing.

Cancellation for Failure to File Affidavit or Declaration During Sixth Year

Authority: Secs. 2.161 to 2.165 also issued under sec. 8, 60 Stat. 431; 15 U.S.C. 1058.

§ 2.160

Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation of registration.

(a) During the following time periods, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse, or the registration will be cancelled:

(1)

(i) For registrations issued under the Trademark Act of 1946, on or after the fifth anniversary and no later than the sixth anniversary after the date of registration; or

(ii) For registrations issued under prior Acts, on or after the fifth anniversary and no later than the sixth anniversary after the date of publication under section 12(c) of the Act; and

(2) For all registrations, within the year before the end of every ten-year period after the date of registration.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2) of this section, with payment of the grace period surcharge required by section 8(c)(1) of the Act and §2.6.

(b) For the requirements for the affidavit or declaration, see §2.161.

[64 FR 48924, Sept. 8, 1999]

§ 2.161

Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

A complete affidavit or declaration under section 8 of the Act must:

- (a) Be filed by the owner within the period set forth in §2.160(a);
- (b) Include a statement that is signed and verified (sworn to) or supported by a declaration under §2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in §2.160(a). A person who is properly authorized to sign on behalf of the owner is:
 - (1) A person with legal authority to bind the owner; or
 - (2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or
 - (3) An attorney as defined in §10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the owner.
- (c) Include the registration number;
- (d)(1) Include the fee required by §2.6 for each class of goods or services that the affidavit or declaration covers;
- (2) If the affidavit or declaration is filed during the grace period under section 8(c)(1) of the Act, include the late fee per class required by §2.6;
- (3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of §2.164 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;
- (e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under §2.161(f)(2);
- (2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;
- (f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or
- (2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark;
- (g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under §2.161(f)(2). The specimen must:
 - (1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of the services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen;
 - (2) Be flat and no larger than 8 1/2 inches (21.6 cm.) wide Be flat and no larger than 8.5 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8.5 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the record. In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD-ROM, or a specimen in another appropriate medium.
 - (3) Be a digitized image in .jpg format, if transmitted through TEAS.

[64 FR 48924, Sept. 8, 1999, as amended at 67 FR 79522, Dec. 30, 2002, 68 FR 55769, Sept. 26, 2003]

§ 2.162

Notice to registrant.

When a certificate of registration is originally issued, the Office includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 8 of the Act. However the affidavit or declaration must be filed within the time period required by section 8 of the Act even if this notice is not received.

[64 FR 48925, Sept. 8, 1999]

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affidavit or declaration under §12(c) of the Act may be filed at any time during the life of the registration.

A claim of the benefits of the 1946 Act does *not* affect or alter the *term* of the 1905 or 1881 Act registration. These registrations still remain in force for the times indicated in TMEP §1602.02, *subject to cancellation by the Office if acceptable affidavits of continued use or excusable nonuse are not filed under 15 U.S.C. §1058*. The deadline for *renewal* (and the affidavit of continued use or excusable nonuse required during the year before the end of every ten-year period after the date of the registration) is calculated from the date of issue of the registration, *not* from the date of publication of the notice of the registrant's claim of the benefits of the 1946 Act.

1603.01 Notification and Printing of Mark in *Official Gazette*

If the affidavit or declaration claiming the benefits of the Act of 1946 is acceptable, the mark and accompanying notice of the claim of benefits of the 1946 Act are printed in the *Official Gazette* under the heading "Registrations Published Under Sec. 12(c)." 37 C.F.R. §2.154. The Office notifies the registrant of the printing of the mark in the *Official Gazette*, and also informs the registrant of the requirement for filing affidavits of use or excusable nonuse under 15 U.S.C. §1058. 37 C.F.R. §2.155.

If an affidavit or declaration claiming the benefits of the Act of 1946 is unacceptable, the Office notifies the registrant of the defect.

These marks are not subject to opposition on their appearance in the *Official Gazette*. 37 C.F.R. §2.156.

1603.02 Cancellation and Incontestability

If the benefits of the Act of 1946 are claimed, registrants under the Acts of 1905 and 1881 may subsequently file affidavits (or declarations) under §15 of the Act of 1946 whereby marks shall be incontestable. *See* TMEP §§1605 *et seq.*

Once the registrant claims the benefits of the Act of 1946, registrations under the 1905 and 1881 Acts are subject to cancellation under §14 of the Act of 1946. *See* TMEP §1607.

1603.03 Affidavits of Use in Commerce Required

After the benefits of the Act of 1946 are claimed for a registration issued under the Act of 1881 or the Act of 1905, the registrant must file an affidavit or declaration of continued use or excusable nonuse during the sixth year after the date of publication of the notice of the registrant's claim of the benefits of the 1946 Act in the *Official Gazette*, or within the six-month grace period after expiration of the sixth year, to avoid cancellation under §8(a)(2) of the Act. 15 U.S.C. §§1058(a)(2) and 1058(c)(1); 37 C.F.R. §2.160(a)(1)(ii).

An affidavit of continued use or excusable nonuse must also be filed within one year before the end of every ten-year period after the date of the registration, or within the six-month grace period thereafter. 15 U.S.C. §1058(a)(3); 37 C.F.R. §2.160(a)(2).

See TMEP §§1604 *et seq.* for further information about affidavits or declarations of continued use or excusable nonuse under 15 U.S.C. §1058.

1604 Affidavit of Continued Use or Excusable Nonuse of Mark in Commerce under §8 [R-2]

15 U.S.C. §1058. Duration.

(a) Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director for failure to comply with the provisions of subsection (b) of this section, upon the expiration of the following time periods, as applicable:

(1) For registrations issued pursuant to the provisions of this Act, at the end of 6 years following the date of registration.

(2) For registrations published under the provisions of section 12(c), at the end of 6 years following the date of publication under such section.

(3) For all registrations, at the end of each successive 10-year period following the date of registration.

(b) During the 1-year period immediately preceding the end of the applicable time period set forth in subsection (a), the owner of the registration shall pay the prescribed fee and file in the Patent and Trademark Office--

(1) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and such number of specimens or facsimiles showing current use of the mark as may be required by the Director; or

(2) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is not in use in commerce and showing that any such nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

(c)(1) The owner of the registration may make the submissions required under this section within a grace period of 6 months after the end of the applicable time period set forth in subsection (a). Such submission is required to be accompanied by a surcharge prescribed by the Director.

(2) If any submission filed under this section is deficient, the deficiency may be corrected after the statutory time period and within the time prescribed after notification of the deficiency. Such submission is required to be accompanied by a surcharge prescribed by the Director.

(d) Special notice of the requirement for affidavits under this section shall be attached to each certificate of registration and notice of publication under section 12(c).

(e) The Director shall notify any owner who files 1 of the affidavits required by this

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section of the Director's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

(f) If the registrant is not domiciled in the United States, the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

Under 15 U.S.C. §1058, the owner of a registration must periodically file affidavits or declarations of continued use or excusable nonuse of the mark. The purpose of the affidavit or declaration of continued use or excusable nonuse (§8 affidavit) is to remove marks that are no longer being used in commerce from the registers in the Office.

1604.01 Registrations to Which §8 Affidavit Pertains

Six-Year Section 8 Affidavits

Under §8(a)(1) of the Trademark Act, an affidavit or declaration under §8 of the Act is required during the sixth year after the date of registration for registrations issued under the Act of 1946 on either the Principal Register or the Supplemental Register, or within the six-month grace period after expiration of the sixth year. This requirement applies to all 1946 Act registrations, including those issued under §44 of the Act. 15 U.S.C. §§1058(a)(1) and 1058(c)(1); 37 C.F.R. §2.160(a)(1)(i).

Under §8(a)(2) of the Act, an affidavit or declaration under §8 is required during the sixth year after the date of publication under §12(c) for registrations issued under the Acts of 1881 and 1905 if the owner claims the benefits of the Act of 1946 under §12(c), or within the six-month grace period after the end of the sixth year. 15 U.S.C. §§1058(a)(2) and 1058(c)(1); 37 C.F.R. §2.160(a)(1)(ii); TMEP §1603.03.

Ten-Year Section 8 Affidavits Required for All Registrations

Section 8(a)(3) of the Act requires an affidavit or declaration of continued use or excusable nonuse at the end of each successive ten-year period following the date of registration, or within the six-month grace period after the end of the ten-year period. This applies to *all registrations*, including registrations issued under prior Acts. 15 U.S.C. §1058(a)(3). However, the provisions of §8(a)(3) of the Act, requiring the filing of a §8 affidavit at the end of each successive ten-year period after registration,

do not apply to a registration issued or renewed for a twenty-year term until a renewal application is due. See TMEP §1604.04(b).

1604.02 Notice of When Affidavit Is Due

A statement noting the requirement for filing the affidavits or declarations of continued use or excusable nonuse under §8 of the Act is included on each certificate of registration as originally issued. 15 U.S.C. §1058(d). This is the only notice that the Office provides regarding this requirement. However, the owner must file the affidavit or declaration within the time periods required by §8 of the Act regardless of whether the owner receives the notice. 37 C.F.R. §2.162. The Office does not provide any reminder of the due date(s) of the affidavits.

1604.03 Form for Filing Affidavit

To expedite processing, the Office prefers that the owner file the §8 affidavit electronically through TEAS. See TMEP §301 for more information about electronic filing. Forms for filing affidavits of continued use or excusable nonuse under §8, combined affidavits of use and incontestability under §§8 and 15 (see TMEP §1605.05), and §8 affidavits combined with renewal applications under §9 of the Act (see TMEP §1604.19) are available through TEAS at <http://www.uspto.gov>. Alternatively, the owner can call the Trademark Assistance Center at (703) 308-9000 or (800) 786-9199 to obtain a pre-printed form that can be mailed, faxed or hand-delivered to the Office.

See TMEP §1604.04 regarding the deadline for filing the affidavit, and TMEP §1604.05 regarding the requirements for filing the affidavit.

1604.04 Time for Filing Affidavit [R-1]

37 C.F.R. §2.160(a). During the following time periods, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse, or the registration will be cancelled:

(1)(i) For registrations issued under the Trademark Act of 1946, on or after the fifth anniversary and no later than the sixth anniversary after the date of registration; or
(ii) For registrations issued under prior Acts, on or after the fifth anniversary and no later than the sixth anniversary after the date of publication under section 12(c) of the Act; and

(2) For all registrations, within the year before the end of every ten-year period after the date of registration.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2) of this section, with payment of the grace period surcharge required by section 8(c)(1) of the Act and §2.6.

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Under §§8(a) and (b) of the Trademark Act, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse:

- (1) on or after the fifth anniversary and no later than the sixth anniversary of the date of registration or date of publication under §12(c) of the Act; *and*
- (2) within the year before the end of every ten-year period after the date of registration. 37 C.F.R. §2.160(a).

See TMEP §1604.04(b) regarding registrations in twenty-year terms.

Under §8(c)(1) of the Act, the owner may file the affidavit or declaration within a grace period of six months after the expiration of the deadline set forth in §8(a) of the Act, accompanied by an additional grace period surcharge.

Affidavits may be filed on the registration anniversary dates at the end of the fifth and sixth years, or at the end of the ninth and tenth years.

Example: For a registration issued on Nov. 1, 1999, a six-year affidavit may be filed as early as Nov. 1, 2004, and may be filed as late as November 1, 2005, before entering the six-month grace period.

Under 37 C.F.R. §1.6(a)(4), a §8 affidavit or declaration filed electronically through TEAS is considered to have been filed on the date the Office receives the transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia.

Section 8 affidavits or declarations filed on paper are considered timely if they are mailed or transmitted by the due date with a certificate of mailing or facsimile transmission under 37 C.F.R. §1.8(a)(1). See TMEP §§305.02 and 306.05 for certificate of mailing and certificate of facsimile transmission procedures to avoid lateness.

If the owner of the registration does not file an affidavit or declaration of continued use or excusable nonuse before the end of the grace period, the registration will be cancelled. 37 C.F.R. §§2.160(a) and 2.164(b). See TMEP §1604.07 regarding who may file a §8 affidavit.

1604.04(a) Premature Filing of Affidavit

The affidavit cannot be filed before the periods specified in §§8(a) and (b) of the Act. The purpose of the affidavit is to show that the mark is still in use in commerce within the relevant period, which cannot be done by an affidavit filed before that period. *In re Holland American Wafer Co.*, 737 F.2d 1015, 222 USPQ 273 (Fed. Cir. 1984). If an affidavit is filed before the period specified in §§8(a) and (b) of the Act, the Office will issue a notice advising the owner: that the affidavit is premature; of the appropriate time for filing the §8 affidavit; that the fee(s) submitted will be held; and that the owner may file a new affidavit at the appropriate time or may request a refund at any time. There is no deficiency surcharge. The prematurely filed affidavit

will be placed in the file for informational purposes only. The owner of the registration must file a newly executed affidavit or declaration before the end of the grace period, or the registration will be cancelled and the Office will refund the fees.

See TMEP §1604.08(b) regarding the date of execution of a §8 affidavit.

1604.04(b) Registrations in Twenty-Year Terms

As noted in TMEP §1604.04, §8(a)(3) of the Act requires an affidavit or declaration of continued use or excusable nonuse at the end of each successive ten-year period following the date of registration for all registrations. However, this requirement does not apply to a registration issued or renewed for a twenty-year term (*i.e.*, a registration issued or renewed before November 16, 1989) until a renewal application is due. See notice at 1228 TMOG 187, 189 (Nov. 30, 1999).

Example: If a registration was issued or renewed on November 15, 1989, no §8(a)(3) affidavit is due between November 15, 1998 and November 15, 1999. Section 8(a)(3) of the Act does not apply until the renewal application is due, *i.e.*, between November 15, 2008 and November 15, 2009.

Should the Office receive a §8(a)(3) affidavit during the tenth year for a registration in a twenty-year term, the Office will refund the filing fee and notify the filer that the document will not be processed. The Office will not return the document.

1604.05 Requirements for Affidavit or Declaration of Continued Use or Excusable Nonuse [R-2]

37 C.F.R. §2.161. *Requirements for a complete affidavit or declaration of continued use or excusable nonuse*

A complete affidavit or declaration under section 8 of the Act must:

- (a) *Be filed by the owner within the period set forth in §2.160(a);*
- (b) *Include a statement that is signed and verified (sworn to) or supported by a declaration under §2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in §2.160(a). A person who is properly authorized to sign on behalf of the owner is:*
 - (1) *a person with legal authority to bind the owner; or*
 - (2) *a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or*
 - (3) *an attorney as defined in §10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the owner.*
- (c) *Include the registration number;*
- (d)(1) *Include the fee required by §2.6 for each class of goods or services that the*

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affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 8(c)(1) of the Act, include the late fee per class required by §2.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of §2.164 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under §2.161(f)(2);

(2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;

(f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark;

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under §2.161(f)(2). The specimen must:

(1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of the services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen;

(2) Be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper.

1604.06 Fees

1604.06(a) Filing Fee for Affidavit or Declaration

Under 15 U.S.C. §1058(b) and 37 C.F.R. §2.161(d)(1), an affidavit or declaration of continued use or excusable nonuse must include the fee required by 37 C.F.R. §2.6 for each class of goods or services that the affidavit or declaration covers. See TMEP §§1401.02, 1401.04 and 1601.06 regarding use of international classification or prior United States classification to calculate fees due.

1604.06(b) Grace Period Surcharge and Deficiency Surcharge

If the affidavit or declaration is filed during the grace period under §8(c)(1) of the Act, it must include the grace period surcharge per class required by 37 C.F.R. §2.6. 37 C.F.R. §2.161(d)(2).

Section 8(c)(2) of the Trademark Act requires a "deficiency surcharge" for correcting deficiencies in the affidavit or declaration after expiration of the deadlines specified in §8. *See* TMEP §§1604.17 *et seq.* regarding the deadlines and surcharge for correcting deficiencies.

Only a single deficiency surcharge is required for correcting one or more deficiencies in a multi-class registration. Similarly, only a single deficiency surcharge is required to correct several deficiencies within one §8 affidavit or one combined filing under §§8 and 9. *See* TMEP §1604.19 regarding combined filings under §§8 and 9.

The grace period surcharge applies only where no filing was made during the sixth year after the date of registration or date of publication under §12(c) of the Act, or within the year before the end of any ten-year period after the date of registration. A registrant who files within these periods, but corrects a deficiency after these periods have expired, will be subject to the deficiency surcharge only. On the other hand, someone who files during the grace period and cures deficiencies after expiration of the grace period will be subject to both the grace period surcharge (for the ability to file the affidavit during the grace period) and the deficiency surcharge (for the ability to correct a deficiency after the end of the grace period). H.R. Rep. No. 194, 105th Congress, 1st Sess. 17 (1997).

1604.06(c) Processing Affidavit or Declaration Filed With Insufficient Fees

An affidavit or declaration that does not include a fee, or does not include sufficient fees for all the classes to which the affidavit pertains (and the grace period surcharge, where applicable), is deficient. Fee deficiencies may be cured before expiration of the deadlines set forth in §8 of the Act without payment of a deficiency surcharge, or after expiration of the deadlines set forth in §8 of the Act with the deficiency surcharge required by §8(c)(2) of the Act. *See* TMEP §§1604.17 *et seq.* for information about the procedures, deadlines, and surcharge for correcting deficiencies.

If the affidavit or declaration was filed without sufficient fee(s), but the affidavit or declaration included an authorization to charge deficient fees to a USPTO deposit account (37 C.F.R. §1.25), the required fee(s) (and grace period surcharge, where applicable) will be charged to the deposit account. If the deposit account authorization was included with the affidavit or declaration as filed, and the deposit account had sufficient funds to cover the fee(s) in question, there is no fee deficiency and no deficiency surcharge is required.

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An authorization to charge fees to a deposit account with insufficient funds to cover the fee is regarded as a deficiency.

If a check submitted as payment of a filing fee for an affidavit of continued use or excusable nonuse is returned to the Office unpaid, this is also regarded as a deficiency. In addition to the deficiency surcharge (where applicable), there is a \$50 fee for processing the returned check. 37 C.F.R. §1.21(m). *See* TMEP §405.02(a) for additional information about returned checks.

A fee that is charged to a credit card and then refused by a financial institution is also regarded as a deficiency. In addition to the deficiency surcharge (where applicable), there is a \$50 fee for processing the payment. 37 C.F.R. §1.21(m). *See* TMEP §405.01(a).

If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Post Registration examiner will issue an Office action requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. If the owner does not submit the required fee(s) or specify the class(es) to which the original fee(s) should be applied, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class. 37 C.F.R. §2.161(d)(3).

1604.07 Ownership, and Who May File Affidavit

1604.07(a) Affidavit or Declaration Must be Filed by Owner [R-2]

The affidavit or declaration of continued use or excusable nonuse must be filed by the owner of the registration. Filing by the owner is a minimum requirement that must be met before the expiration of the deadlines set forth in §8(a) of the Act (*i.e.*, during the sixth year after the date of registration or publication under §12(c) of the Trademark Act, or within the year before the end of every ten-year period after the date of registration), and/or within the six-month grace period after expiration of these deadlines. 37 C.F.R. §2.164(b).

If it is unclear whether the party who filed the affidavit is the present owner, the Post Registration examiner will issue an Office action requiring the party to establish its ownership. If the party who filed the affidavit was the owner of the registration at the time of filing, the owner may file evidence to establish ownership even if the filing period set forth in §8 of the Act has expired. There is no deficiency, and no deficiency surcharge is required for providing evidence to establish ownership. *See* TMEP §1604.07(b).

If the affidavit or declaration was filed in the name of the wrong party, and there is time remaining in the filing period or grace period, the true owner must file a complete new affidavit or declaration, together with the filing fee per class required by 37 C.F.R. §2.6, and, if applicable, a specimen of use for each class. If the new affidavit or declaration is filed during the grace period, the owner must include the grace period surcharge per class with the new affidavit or declaration.

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If the affidavit or declaration was filed in the name of the wrong party, and there is no time remaining in the grace period, the registration will be cancelled. 15 U.S.C. §1058; 37 C.F.R. §2.164(b). Filing in the name of another entity is not a deficiency that can be corrected after the expiration of the grace period. *See In re Precious Diamonds, Inc.*, 635 F.2d 845, 208 USPQ 410 (C.C.P.A. 1980); *In re Media Central IP Corp.*, 65 USPQ2d 1637 (Comm'r Pats. 2002); *In re ACE III Communications, Inc.*, 62 USPQ2d 1049 (Comm'r Pats. 2001); *In re Caldon Company Limited Partnership*, 37 USPQ2d 1539 (Comm'r Pats. 1995); *In re Weider*, 212 USPQ 947 (Comm'r Pats. 1981). *See also* TMEP §1604.07(f) regarding mistakes in setting forth the name of the owner.

1604.07(b) Establishing Ownership

When the affidavit is filed by someone other than the original registrant, the examiner cannot accept the affidavit unless there is a clear chain of title from the original registrant to the party who filed the affidavit. 37 C.F.R. §3.73(b); TMEP §502.

When the affidavit is filed by someone other than the original registrant, the examiner will check the records of the Assignment Services Division of the Office. If the records of the Assignment Services Division show clear title in the party who filed the affidavit, no inquiry will be issued.

If the records of the Assignment Services Division do not show clear title in the party who filed the affidavit, the examiner will issue an Office action requiring the party to establish its ownership of the registration. To establish ownership, the party must: (1) record papers that show each change of ownership in the Assignment Services Division of the Office and specify the reel and frame numbers where such evidence is recorded; or (2) submit documentary evidence of a chain of title from the original owner to the assignee, so that the record will show that title is in the entity who filed the affidavit. 37 C.F.R. §3.73(b)(1); TMEP §502.

"Documentary evidence of a chain of title from the original owner to the assignee" (37 C.F.R. §3.73(b)(1)(i)) normally consists of the same type of documents that would be recorded in the Assignment Services Division, e.g., assignment documents, certificates of merger, or certificates of change of name. In the alternative, an affidavit or declaration containing sufficient facts to support the transfer of title may be accepted as proof.

The owner may submit evidence of ownership even if the filing period set forth in §8 of the Act has expired. Where the party who filed the affidavit was the owner of the registration at the time of filing, there is no deficiency, and no deficiency surcharge is required for providing evidence to establish ownership.

1604.07(c) Acceptance Notice Issued in Name of Owner of Record

The notification of acceptance of a §8 affidavit is issued in the name of the owner of record, as shown in the automated records of the Trademark Operation (*i.e.*, TRAM,

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TARR, X-Search and TESS). Recording the document with the Assignment Services Division does not in itself change the owner of record in the records of the Trademark Operation. The new owner must also notify the Post Registration Section of the Office that the document has been recorded and provide the reel and frame number.

When a party other than the original registrant files a §8 affidavit, the Office will accept the affidavit if the new owner submits documentary evidence of the chain of title (*see* TMEP §1604.07(b)), even if the new owner does not record the documents of ownership in the Assignment Services Division. However, the Office will not issue the notice of acceptance of the §8 affidavit in the name of the new owner unless the new owner (1) records the appropriate document in the Assignment Services Division; *and* (2) notifies the Post Registration examiner that the document has been recorded.

See TMEP §502 regarding establishing ownership of a registration, and TMEP §502.02 regarding issuance of a new certificate in the name of a new owner.

1604.07(d) Changes of Legal Entity

The procedures for establishing ownership, as discussed in TMEP §1604.07(b), also apply to changes of name and changes of legal entity. *See* TMEP §1604.07(e) regarding changes of name.

A change in the state of incorporation is a change of legal entity, creating a new party.

The death of a partner, or other change in the membership of a partnership, creates a change in legal entity, unless the partnership agreement provides for continuation of the partnership and the relevant state law permits this.

A merger of companies into a new company normally constitutes a change of legal entity.

Affidavits may be accepted from trustees, executors, administrators, and the like, when supported by a court order or other evidence of the person's authority to act on behalf of the present owner. If there is a court order, a copy of the order should be submitted.

1604.07(e) Changes of Name

A mere change of the name of a party is not a change of entity and will not require an inquiry regarding ownership if there is clear title in the party who filed the §8 affidavit. Therefore, if the owner records a change of name with the Assignment Services Division and subsequently files the §8 affidavit in its former name, the examiner will not issue an inquiry regarding ownership.

However, if it is unclear from the records of the Assignment Services Division whether the party who filed the affidavit is the owner of record, the owner must either record evidence of the change of name in the Assignment Services Division or submit

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proof of the change of name, as discussed in TMEP §1604.07(b). For a corporation, this is done by recording or submitting a certificate of change of name issued by the Secretary of State (or other authorized body) of the state of incorporation.

See TMEP §1604.07(c) regarding issuance of the notice of acceptance of the affidavit in the name of the new owner.

1604.07(f) Correction of Mistake in Setting Forth the Name of the Owner [R-1]

If the affidavit or declaration was filed by the owner of the registration, but there is a mistake in the manner in which the name of the owner is set out in the affidavit, the mistake can be corrected. *In re Atlanta Blue Print Co.*, 19 USPQ2d 1078 (Comm'r Pats. 1990). No deficiency surcharge is required in this situation.

However, if the affidavit or declaration was mistakenly filed in the name of a person or legal entity who did not own the mark as of the filing date, a new affidavit or declaration cannot be filed in the name of the true owner unless there is time remaining in the grace period. See TMEP §1604.07(a). *In re ACE III Communications, Inc.*, 62 USPQ2d 1049 (Comm'r Pats. 2001).

See TMEP §1201.02(c) for examples of correctable and non-correctable errors.

1604.08 Execution of Affidavit or Declaration

1604.08(a) Persons Who May Sign Affidavit or Declaration

Under 37 C.F.R. §2.161(b), the §8 affidavit or declaration must include a statement that is signed and verified (sworn to) or supported by a declaration under 37 C.F.R. §2.20 by a person properly authorized to sign on behalf of the owner. A "person who is properly authorized to sign on behalf of the owner" is: (1) a person with legal authority to bind the owner; (2) a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or (3) an attorney as defined in 37 C.F.R. §10.1(c) who has an actual written or verbal power of attorney or an implied power of attorney from the owner.

Generally, the Office does not question the authority of the person who signs a verification, unless there is an inconsistency in the record as to the signatory's authority to sign. See TMEP §804.04.

1604.08(b) Date of Execution of Affidavit or Declaration

Under 37 C.F.R. §2.161(b), the verified statement must be executed on or after the beginning of the relevant filing period specified in §8 of the Act (*i.e.*, on or after the fifth anniversary of the date of registration or publication under §12(c), or on or after the beginning of the one-year period before the end of each ten-year period after the date of registration). Because the purpose of the affidavit is to attest to the continued

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use or excusable nonuse of the mark within the time periods specified in §8 of the Act, the affidavit cannot be executed before these time periods begin.

An affidavit filed within the period specified in §8 of the Act, but executed before that period, is deficient. The owner of the registration will be required to submit a substitute or supplemental affidavit or declaration attesting to use in commerce (or excusable nonuse) on or in connection with the goods or services within the relevant period specified in §8 of the Act.

If the prematurely executed §8 affidavit was filed during the relevant period specified in §§8(a) or 8(b) of the Act (*i.e.*, during the sixth year after the date of registration or publication under §12(c) of the Trademark Act, or within one year before the end of any ten-year period after the date of registration), the substitute affidavit may be filed before expiration of the relevant period for no fee, or after expiration of the relevant period with the deficiency surcharge required under §8(c)(2) of the Act. If the prematurely executed §8 affidavit was filed during the grace period, the substitute affidavit may be filed before expiration of the grace period for no fee, or after expiration of the grace period with the deficiency surcharge. *See* TMEP §1604.04 regarding the deadlines for filing §8 affidavits, and TMEP §§1604.17 *et seq.* for information about the procedures, deadlines, and surcharge for correcting deficiencies.

1604.08(c) Signature of Electronically Transmitted Affidavit or Declaration

See TMEP §§301 and 804.05 regarding signature of an affidavit or declaration filed electronically through TEAS.

1604.08(d) Form and Wording of Verification

The format of the verification may be: (1) the classical form for verifying, which includes an oath (*jurat*) (*see* TMEP §804.01(a)); or (2) a declaration under 37 C.F.R. §2.20 or 28 U.S.C. §1746 instead of an oath (*see* TMEP §804.01(b)).

1604.09 Goods and/or Services Set Forth in Affidavit or Declaration

1604.09(a) Goods and/or Services Must be Specified or Expressly Incorporated by Reference

Under 15 U.S.C. §1058(b) and 37 C.F.R. §2.161(e)(1), the affidavit or declaration must specify the goods/services recited in the registration on or in connection with which the mark is in use in commerce, and/or the goods/services for which excusable nonuse is claimed. *See* TMEP §1604.10 regarding use in commerce and TMEP §1604.11 regarding excusable nonuse. The affidavit or declaration may incorporate by reference the identification set forth in the registration certificate (*e.g.*, “all goods/services listed in the registration” or “all goods/services listed in the registration except... [specifying the goods/services not covered by the affidavit or

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declaration]”). Incorporation by reference is recommended, to avoid inadvertent omissions.

If the owner is alleging use with respect to some of the goods/services and excusable nonuse for other goods/services, the owner must clearly indicate which goods/services are in use and which goods/services are not in use.

1604.09(b) Deletion of Goods and/or Services

If the owner of the registration intends to delete goods/services from the registration, this should be expressly stated in the affidavit or declaration. 37 C.F.R. §2.161(e)(2).

1604.09(c) Failure to List All Goods and/or Services Recited in Registration

An affidavit or declaration that fails to list or incorporate by reference all the goods/services to which the affidavit pertains, and does not include a statement of intent to delete the omitted goods/services, is deficient.

If the owner did not intend to delete the goods/services, the owner may file a substitute or supplemental affidavit or declaration adding the omitted goods/services. The owner must verify that the mark was in use in commerce on or in connection with the goods/services during the relevant filing period specified in §8 of the Act. This substitute affidavit may be filed before expiration of the relevant deadline set forth in §8 of the Act for no fee, or after expiration of the deadline set forth in §8 of the Act with the deficiency surcharge required by §8(c)(2) of the Act. See TMEP §§1604.17 *et seq.* for information about the procedures, deadlines, and surcharge for correcting deficiencies.

If the owner does not file a substitute or supplemental affidavit or declaration that the mark was in use in commerce on or in connection with the omitted goods/services within the period for response to the Office action (*see* TMEP §1604.16), the omitted goods/services will be deleted from the registration.

1604.09(d) New Goods and/or Services Cannot be Added

Goods and/or services that are not listed in the registration may not be set forth in the §8 affidavit.

1604.10 Use in Commerce

The §8 affidavit must state that the mark is in use in commerce on or in connection with the goods and/or services listed in the registration, unless excusable nonuse is claimed. 37 C.F.R. §2.161(f)(1). See TMEP §1604.11 regarding excusable nonuse. The §8 affidavit does not have to specify the type of commerce (*e.g.*, interstate) in which the mark is used. The Office presumes that a registrant who states that the

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mark is in use in commerce is stating that the mark is in use in a type of commerce that Congress can regulate, unless there is contradictory evidence in the record.

A §8 affidavit that does not state that the mark is in use in commerce is deficient. The owner must submit a substitute affidavit or declaration stating that the mark was in use in commerce on or in connection with the goods and/or services listed in the registration during the relevant period specified in §8 of the Trademark Act, as follows:

- (1) If the §8 affidavit was filed during the sixth year after the date of registration or publication under §12(c) of the Act, the substitute affidavit must state that the mark was in use in commerce on or in connection with the goods and/or services before the expiration of the sixth year after the date of registration or publication under §12(c); or
- (2) If the §8 affidavit was filed within one year before the end of any ten-year period after the date of registration, the substitute affidavit must state that the mark was in use in commerce on or in connection with the goods and/or services within one year before the end of the ten-year period after the date of registration; or
- (3) If the §8 affidavit was filed during the grace period, the substitute affidavit must state that the mark was in use in commerce on or in connection with the goods and/or services before the expiration of the grace period.

If the §8 affidavit was filed during the relevant period specified in §§8(a) and 8(b) of the Act (*i.e.*, during the sixth year after the date of registration or publication under §12(c) of the Act, or within one year before the end of any ten-year period after the date of registration), the substitute affidavit may be filed before expiration of the relevant period for no fee, or after expiration of the relevant period with the deficiency surcharge required under §8(c)(2) of the Act. If the §8 affidavit was filed during the grace period, the substitute affidavit may be filed before expiration of the grace period for no fee, or after expiration of the grace period with the deficiency surcharge. *See* TMEP §1604.04 regarding the deadlines for filing §8 affidavits, and TMEP §§1604.17 *et seq.* for information about the procedures, deadlines, and surcharge for correcting deficiencies.

While a substitute affidavit may be filed after the expiration of the period specified in §8 of the Act, the substitute affidavit must attest to use within the time period specified in §8 of the Act. Therefore, if the substitute affidavit does not state that the mark was in use in commerce on or in connection with the goods and/or services within the relevant period specified in §8 of the Act, the Office will not accept the §8 affidavit, and the registration will be cancelled.

1604.11 “Excusable Nonuse” of Mark

Extract from 37 C.F.R. §2.161. A complete affidavit or declaration under section 8 of the Act must:

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...

(f) ...

(2) *If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark[.]*

If the mark is not in use in commerce but the owner of the registration believes the registration should not be cancelled, the owner may file an affidavit or declaration showing that nonuse is due to special circumstances that excuse the nonuse, and is not due to any intention to abandon the mark. 15 U.S.C. §1058(b)(2). *Ex parte Kelley-How-Thomson Co.*, 118 USPQ 40 (Comm'r Pats. 1958).

The affidavit must state when use in commerce stopped and give the approximate date when use is expected to resume. 37 C.F.R. §2.161(f)(2). It should also specify the reason for nonuse, the steps being taken to put the mark back in use in commerce, and any other relevant facts. There must be a recitation of facts as to nonuse for each class to which the affidavit pertains, or it must be clear that the facts recited apply to all the classes in a multi-class application. The goods and/or services for which excusable nonuse is claimed must be specified. *See* TMEP §1604.09 *et seq.* regarding proper specification of the goods and services.

Since "showing" implies proof, merely stating that there is no intention to abandon the mark is not enough. The affidavit or declaration must recite facts and circumstances that clearly demonstrate that nonuse is due to special circumstances that excuse the nonuse. *In re Conusa Corp.*, 32 USPQ2d 1857 (Comm'r Pats. 1993).

If the Post Registration examiner determines that the facts set forth do not establish excusable nonuse, the owner may file supplementary evidence or explanation. If the affidavit included a claim of excusable nonuse when filed, no deficiency surcharge will be required for supplementing this showing with additional evidence or an explanation.

The following examples provide general guidelines:

- *Decreased Demand.* Decreased demand for the product sold under the mark, resulting in its discontinuance for an indefinite period, does not excuse nonuse. The purpose of the affidavit requirement is to eliminate registrations of marks that are in nonuse resulting from ordinary changes in social or economic conditions. *See In re Conusa Corp., supra; In re Parmalat S.p.A.*, 32 USPQ2d 1860 (Comm'r Pats. 1991); *Ex parte Astra Pharmaceutical Products, Inc.*, 118 USPQ 368 (Comm'r Pats. 1958); *Ex parte Denver Chemical Mfg. Co.*, 118 USPQ 106 (Comm'r Pats. 1958).
- *Trade Embargo or Other Circumstance Beyond Owner's Control.* Nonuse is considered excusable where the owner of the registration is willing and able to

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continue use of the mark in commerce, but some special circumstance beyond the owner's control prevents such use. For example, nonuse due to a trade embargo might be considered excusable.

- *Sale of a Business.* Temporary nonuse due to the sale of a business might be considered excusable.
- *Retooling.* The mark might be out of use temporarily because of an interruption of production for retooling of a plant or equipment, with production possible again at a scheduled time. However, nonuse due to retooling is excusable only if the owner shows that the plant or equipment being retooled was essential to the production of the goods and that alternative equipment was unavailable on the market. *In re New England Mutual Life Insurance Co.*, 33 USPQ2d 1532 (Comm'r Pats. 1991).
- *Orders on Hand.* If the product is of a type that cannot be produced quickly or in large numbers (*e.g.*, airplanes), yet there are orders on hand and activity toward filling them, nonuse might be considered excusable.
- *Illness, Fire and Other Catastrophes.* Illness, fire and other catastrophes may create situations of temporary nonuse, with the owner being able to outline arrangements and plans for resumption of use. Such nonuse is often excusable. However, a mere statement that the owner is ill and cannot conduct his or her business will not in itself excuse nonuse; the owner must show that the business is an operation that could not continue without his or her presence. *New England Mutual Life Insurance, supra*.

1604.12 Specimen Showing Current Use of Mark in Commerce

1604.12(a) Specimen for Each Class Required

A §8 affidavit must include a specimen or facsimile showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed. 15 U.S.C. §1058(b); 37 C.F.R. §2.161(g).

See TMEP §§904.04 *et seq.* regarding trademark specimens, and TMEP §§1301.04 *et seq.* regarding service mark specimens.

The specimen must show use of essentially the same mark as the mark shown in the registration, and must be used on or in connection with the goods and/or services listed in the registration. A specimen that shows use of a materially different mark (*see* TMEP §1604.13), or shows use of the mark on other goods or services, is unacceptable. An affidavit or declaration that does not include an acceptable specimen for each class of goods and/or services to which the affidavit pertains is deficient.

If the specimen is deficient, the owner must file a substitute specimen, together with an affidavit or declaration that the substitute specimen was in use in commerce on or

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in connection with the goods or services during the relevant period specified in §8 of the Act. See TMEP §1604.12(c) regarding substitute specimens.

Under 37 C.F.R. §2.161(g)(2), the specimen must be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements, the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches wide by 11.69 inches long), put it in the file wrapper, and destroy the original bulky specimen. If the copy of the specimen created by the Office does not adequately depict the mark, the Post Registration examiner will require a substitute specimen that meets the size requirements of the rule, and an affidavit or declaration verifying the use of the substitute specimen.

The Office will not return specimens filed with a §8 affidavit or declaration.

1604.12(b) Specimens in Electronically Filed Affidavits

If the owner files the §8 affidavit electronically using TEAS, the owner must submit a digitized image (*e.g.*, .gif or .jpg) file so the Office may generate a copy of the specimen. 37 C.F.R. §2.56(d)(4).

Sometimes there is no specimen in the file due to a technical problem in printing the specimen. In this situation, the Post Registration examiner should ask the owner to submit by mail or fax: (1) the specimen (or a facsimile of the specimen) that was attached to the original electronically filed affidavit; and (2) a statement by the person who transmitted the affidavit to the Office that the specimen being submitted by mail (or fax) is a true copy of the specimen submitted with the electronically filed affidavit. This statement does not have to be verified. No deficiency surcharge is required.

1604.12(c) Substitute Specimens

If a specimen for any class is omitted or is deficient, the owner must file a substitute specimen, together with an affidavit or declaration that the substitute specimen was in use in commerce on or in connection with the goods or services during the relevant period specified in §8 of the Act, as follows:

- (1) If the §8 affidavit was filed during the sixth year after the date of registration or publication under §12(c) of the Act, the affidavit supporting use of the substitute specimen must state that the substitute specimen was in use in commerce before the expiration of the sixth year after the date of registration or publication under §12(c), if accurate; or
- (2) If the §8 affidavit was filed within one year before the end of any ten-year period after the date of registration, the affidavit supporting use of the substitute specimen must state that the substitute specimen was in use in commerce within one year before the end of the ten-year period after the date of registration, if accurate; or

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- (3) If the §8 affidavit was filed during the grace period, the affidavit supporting use of the substitute specimen must state that the substitute specimen was in use in commerce before the expiration of the grace period, if accurate.

If the §8 affidavit was filed during the relevant period specified in §§8(a) or 8(b) of the Act (*i.e.*, during the sixth year after the date of registration or publication under §12(c) of the Trademark Act, or within one year before the end of any ten-year period after the date of registration), the substitute specimen may be filed before expiration of the relevant period for no fee, or after expiration of the relevant period with the deficiency surcharge required under §8(c)(2) of the Act. If the §8 affidavit was filed during the grace period, the substitute specimen may be filed before expiration of the grace period for no fee, or after expiration of the grace period with the deficiency surcharge. *See* TMEP §1604.04 regarding the deadlines for filing §8 affidavits, and TMEP §§1604.17 *et seq.* for information about the procedures, deadlines, and surcharge for correcting deficiencies.

While a substitute specimen and supporting affidavit may be filed after the expiration of the period specified in §8 of the Act, the supporting affidavit must attest to use of the specimen within the time period specified in §8 of the Act. Therefore, if the affidavit supporting the substitute specimen does not state that the specimen was in use in commerce prior to the end of the relevant period specified in §8 of the Act, the §8 affidavit will not be accepted, and the registration will be cancelled as to any class for which a proper specimen was not provided.

1604.13 Differences in the Mark As Used on the Specimen and the Mark as Registered

The mark to which the §8 affidavit pertains must be essentially the same as the mark that appears in the registration. Where the specimen reflects a change in the mark since the registration issued, acceptance of the affidavit will depend on the degree of change. A *material* alteration of the mark will result in refusal of the affidavit on the ground that the registered mark is no longer in use. *In re International Nickel Co., Inc.*, 282 F.2d 952, 127 USPQ 331 (C.C.P.A. 1960); *In re Continental Distilling Corp.*, 254 F.2d 139, 117 USPQ 300 (C.C.P.A. 1958); *Ex parte Richards*, 153 USPQ 853 (Comm'r Pats. 1967). *Cf. Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986); *In re Holland American Wafer Co.*, 737 F.2d 1015, 222 USPQ 273 (Fed. Cir. 1984)

Mere changes in background or styling, or modernization, are not ordinarily considered to be material changes in the mark. *See Ex parte Petersen & Pegau Baking Co.*, 100 USPQ 20 (Comm'r Pats. 1953) (change in matter determined to be mere background and type face held not a material alteration of "PETER PAN" mark). Whether the change in a mark as used on the specimen is a material change is a question of fact that the Post Registration examiner must determine on a case-by-case basis.

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Generally, the standard used to determine whether a change is material under §8 is the same as the standard used to determine whether the mark in a registration may be amended under 15 U.S.C. §1057(e). If the mark could be amended under §7(e) because the character of the mark had not been materially altered, then the specimen filed with the §8 affidavit should be accepted. In determining whether a change constitutes a material alteration, the Office will always compare the mark in the specimen to the mark as originally registered. See TMEP §§807.14(a) and 1609.02(a) for additional information about material alteration.

However, where the registered mark is currently used as one of several elements in a composite mark, the decision as to whether to accept the specimen requires consideration of whether the registered mark makes an impression apart from the other elements of the composite mark. If the display of the composite is such that the essence of the registered mark makes a separate impression, then the specimen may be sufficient for purposes of the §8 requirement. In many cases, word elements are severable from design elements, because words tend to dominate in forming a commercial impression. *In re DeWitt International Corporation*, 21 USPQ2d 1620 (Comm'r Pats. 1991). If the mark, as used on the §8 specimen, creates a separate impression apart from any other material on the specimen and that any difference between the mark as currently used and the mark as registered is not material, then the specimen may be accepted as evidence of current use of the registered mark.

If the examiner determines that the mark on the specimen is a material alteration of the registered mark, a substitute specimen may be filed. If the substitute specimen is filed after expiration of the relevant filing period specified in §8 of the Act, the owner must pay the deficiency surcharge required by §8(c)(2) of the Act and 37 C.F.R. §2.6. See TMEP §1604.12(c) regarding substitute specimens, and 37 C.F.R. §2.164 and TMEP §§1604.17 *et seq.* regarding the procedures for correcting deficiencies in a §8 affidavit.

1604.13(a) Possible Amendment of Mark in Registration

If the Office accepts the §8 affidavit, and there is a difference between the mark in the affidavit and the mark in the registration, the mark as originally registered remains the mark of record. If the owner wants to change the mark in the registration to agree with the mark currently used, the owner must file a separate request for amendment under §7(e) of the Act, and pay the fee required by 37 C.F.R. §2.6. See *Ex parte Petersen & Pegau Baking Co.*, 100 USPQ 20 (Comm'r Pats. 1953). See TMEP §1609.02 *et seq.* regarding amendment of a registered mark under §7(e).

Amending the mark in a registration under §7(e) to agree with the mark as shown on a §8 specimen is not mandatory.

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1604.14 Designation of Domestic Representative by Foreign Owner [R-2]

Under 15 U.S.C. §1058(f) and 37 C.F.R. §2.161(h), if the owner of the registration is not domiciled in the United States, the affidavit or declaration may include the name and address of a United States resident upon whom notices or process in proceedings affecting the registration may be served. The Office encourages parties who do not reside in the United States to designate domestic representatives. *See* TMEP §604.

1604.15 Office Actions and Notices Regarding Affidavit

Upon receipt of a §8 affidavit, the prosecution history of the registration in the Office's automated database is updated to indicate that the affidavit has been filed. This information is reflected in TRAM and TARR.

When a §8 affidavit is filed electronically through TEAS, the Office immediately issues a confirmation of filing via e-mail that includes the date of receipt and a summary of the submission. This confirmation is evidence of filing should any question arise as to the filing date of the affidavit. If a §8 affidavit is filed on paper, no acknowledgment of receipt of the affidavit is sent before it is examined.

If, on examination, the Office determines that the affidavit or declaration is acceptable, the Office sends a notice of acceptance.

If the affidavit or declaration is not acceptable, the Office issues an action stating the reasons for refusal.

The propriety of the original registration is not re-examined in connection with the affidavit under §8.

1604.16 Response to Office Action [R-2]

Under 37 C.F.R. §2.163(b), a response to a refusal must be filed within six months of the mailing date of the Office action, or before the end of the relevant filing period set forth in §8(a) or §(b) of the Act, whichever is later. If no response is received within that time, the registration will be cancelled.

The owner may file a petition under 37 C.F.R. §§2.146(a)(3) and 2.146(a)(5) to waive 37 C.F.R. §2.163(b) so that a late response to an Office action can be accepted. However, a rule will be waived only in an extraordinary situation, where justice requires and no other party is injured. *See* TMEP §1708. The "unintentional delay" standard of 37 C.F.R. §2.66 (*see* TMEP §§1714 *et seq.*) does not apply to the failure to respond to an Office action issued in connection with a §8 affidavit.

See TMEP §§1604.17 *et seq.* for information about the procedures, deadlines, and surcharge for correcting deficiencies.

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1604.17 Correction of Deficiencies

37 C.F.R. §2.164. *Correcting deficiencies in affidavit or declaration.*

(a) *If the owner of the registration files an affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected, as follows:*

(1) *Correcting deficiencies in affidavits or declarations timely filed within the periods set forth in sections 8(a) and 8(b) of the Act. If the owner timely files the affidavit or declaration within the relevant filing period set forth in section 8(a) or section 8(b) of the Act, deficiencies may be corrected before the end of this filing period without paying a deficiency surcharge. Deficiencies may be corrected after the end of this filing period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and §2.6.*

(2) *Correcting deficiencies in affidavits or declarations filed during the grace period. If the affidavit or declaration is filed during the six-month grace period provided by section 8(c)(1) of the Act, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and §2.6.*

(b) *If the affidavit or declaration is not filed within the time periods set forth in section 8 of the Act, or if it is filed within that period by someone other than the owner, the registration will be cancelled. These deficiencies cannot be cured.*

1604.17(a) Correcting Deficiencies in Affidavits or Declarations Timely Filed Within the Periods Set Forth in §§8(a) and 8(b) of the Act

If the owner of the registration timely files the affidavit or declaration during the periods set forth in §§8(a) and 8(b) of the Act (*i.e.*, during the sixth year after the date of registration or publication under §12(c) of the Trademark Act, or within one year before the end of any ten-year period after the date of registration), deficiencies may be corrected within the relevant period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the relevant period with payment of the deficiency surcharge required by §8(c)(2) of the Act. 37 C.F.R. §2.164(a)(1).

Any deficiency must be cured within the set period for response to the Post Registration examiner's Office action, *i.e.*, within six months of the mailing date of the action, or before the end of the relevant filing period set forth in §8 of the Act, whichever is later. 37 C.F.R. §2.163(b). *See* TMEP §1604.16.

1604.17(b) Correcting Deficiencies in Affidavits or Declarations Filed During the Grace Period

If the owner of the registration files the affidavit or declaration during the six-month grace period under §8(c)(1) of the Act, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge, or after the

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expiration of the grace period with the deficiency surcharge required by §8(c)(2) of the Act. 37 C.F.R. §2.164(a)(2).

Any deficiency must be cured within six months of the mailing date of the Post Registration examiner's Office action. 37 C.F.R. §2.163(b). *See* TMEP §1604.16.

1604.17(c) Defects That Cannot be Cured After Expiration of the Grace Period [R-2]

The registration will be cancelled if an affidavit or declaration of continued use or excusable nonuse is not filed before expiration of the grace period set forth in §8(c)(1) of the Act, or if the affidavit or declaration is filed by someone other than the current owner of the registration. 37 C.F.R. §2.164(b). Untimely filing and filing in the name of the wrong party cannot be cured after expiration of the grace period, even with a deficiency surcharge. *In re Media Central IP Corp.*, 65 USPQ2d 1637 (Comm'r Pats. 2002); *In re ACE III Communications, Inc.*, 62 USPQ2d 1049 (Comm'r Pats. 2001). *See* TMEP §1604.04 regarding the deadline for filing the affidavit, and TMEP §§1604.07 *et seq.* regarding ownership.

1604.18 Petition Under 37 C.F.R. §2.146

The action of an examiner on a §8 affidavit may not be appealed to the Trademark Trial and Appeal Board, but the owner may file a petition for review of the examiner's action under 37 C.F.R. §§2.146(a)(2) and 2.165(b). A petition fee is required by 37 C.F.R. §§2.6 and 2.146(c). *See* TMEP Chapter 1700 regarding petitions.

1604.18(a) Response to Examiner's Refusal Required Before Petition

A response to the examiner's initial refusal to accept an affidavit or declaration is required before filing a petition, unless the examiner directs otherwise or there is no time remaining to respond to the examiner's refusal. 37 C.F.R. §2.165(a).

If the examiner continues the refusal to accept the affidavit or declaration, the owner may file a petition for review of the examiner's action under 37 C.F.R. §2.146(a)(2) within six months of the mailing date of the action continuing the refusal. If no petition is filed within six months, the registration will be cancelled. 37 C.F.R. §2.165(b).

1604.18(b) Decision on Petition is Final Action of the Office

The decision on a petition under 37 C.F.R. §2.146 is the final action of the Office. In the absence of a request for reconsideration (*see* TMEP §1604.18(c)), or an appeal to an appropriate court (*see* TMEP §1604.18(d)) within two months of the mailing date of the decision on petition, the registration will be cancelled.

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1604.18(c) Request for Reconsideration of Denial of Petition

Under Trademark Rule 2.146(j), if a petition is denied, the petitioner may file a request for reconsideration within two months of the mailing date of the decision denying the petition. A second petition fee must be paid with the request for reconsideration. See TMEP §1705.08 regarding requests for reconsideration of petition decisions.

1604.18(d) Appeal to Federal Court

The owner of the registration may appeal to the United States Court of Appeals for the Federal Circuit or commence a civil action for review of the decision denying a petition. 15 U.S.C. §§1071(a)(1) and (b)(1); 37 C.F.R. §§2.145(a) and 2.145(c).

The deadline for filing an appeal or commencing a civil action is two months from the mailing date of the decision on petition. 15 U.S.C. §§1071(a)(2) and (b)(1); 37 C.F.R. §2.145(d)(1). Under 37 C.F.R. §2.145(d)(2), one day is added to any two-month period that includes February 28.

Under 37 C.F.R. §2.165(c), a decision on petition is necessary before the owner can file an appeal or commence a civil action in any court.

1604.19 Affidavit or Declaration of Continued Use or Excusable Nonuse Combined with Renewal Application

Under 37 C.F.R. §2.166, an affidavit or declaration under §8 of the Act and a renewal application under §9 of the Act may be combined into a single document, if the document meets the requirements of both §§8 and 9 of the Act. 37 C.F.R. §2.166.

The filing fee for the combined §8 and §9 filing is the sum of the cost of the individual filings. For example, if the filing fee for the §8 affidavit is \$100 per class, and the filing fee for the renewal application is \$400 per class, then the filing fee for the combined §8 and §9 document is \$500 per class.

If the combined §8 and §9 document is filed during the grace period, the filing fees per class and the grace period surcharge per class must be paid for *both* the §8 affidavit and the §9 renewal application.

Example: A registration expires on June 3, 2002. A combined §8 and §9 document is filed July 8, 2002, during the six-month grace period. The proper fees are as follows: (1) filing fee for the §8 affidavit, per class; (2) grace period surcharge for the §8 affidavit, per class; (3) filing fee for the §9 renewal application, per class; and (4) grace period surcharge for the §9 renewal application, per class.

Failure to include the proper fees is a deficiency that may require a deficiency surcharge. See TMEP §§1604.17 *et seq.* and 1606.13 *et seq.* for information about the procedures, deadlines, and surcharge for correcting deficiencies.

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Only a single deficiency surcharge is required for curing one or more deficiencies in a combined §8 and §9 filing, even if both the §8 affidavit and the §9 renewal application are deficient. Similarly, only a single deficiency surcharge is required to correct several deficiencies within one document.

To expedite processing, the Office prefers that the combined §8 and §9 filing be submitted electronically through TEAS. When the combined filing is submitted electronically, the Office immediately issues a confirmation of filing via e-mail that includes the date of receipt and a summary of the submission. This confirmation is evidence of filing should any question arise as to the filing date. See TMEP §301 for additional information about electronic filing.

A form for a combined filing under §§8 and 9 is available through TEAS at <http://www.uspto.gov>. Alternatively, the owner of the registration can call the Trademark Assistance Center at (703) 308-9000 or (800) 786-9199 to obtain a pre-printed form that can be mailed, faxed or hand-delivered to the Office.

See TMEP §1605.05 regarding a combined filing under §§8 and 15 of the Act.

1605 Affidavit of Incontestability Under §15

Section 15 of the Trademark Act, 15 U.S.C. §1065, provides a procedure by which the exclusive right to use a registered mark in commerce on or in connection with the goods or services covered by the registration can become “incontestable,” if the registrant files an affidavit stating that the mark has been in continuous use in commerce for a period of five years after the date of registration. Under §33(b) of the Act, 15 U.S.C. §1115(b), if the right to use the mark has become incontestable under §15, then the registration is conclusive evidence of the validity of the registered mark and its registration, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the registered mark in commerce, subject to certain defenses and exceptions. Sections 15 and 33(b) apply only to registrations issued on the Principal Register.

Filing an affidavit of incontestability under §15 of the Trademark Act (§15 affidavit) is optional. An eligible registrant may choose to claim the benefits of incontestability and file an appropriate affidavit, or may elect to retain the registration without those benefits. The requirements for maintaining and renewing a federal registration are not affected in either event.

The Office does not “accept” §15 affidavits. *Arman’s Systems, Inc. v. Armand’s Subway, Inc.*, 215 USPQ 1048, 1050 n.2. (TTAB 1982). The Post Registration examiner reviews the affidavit to determine whether it is consistent with the requirements of the statute and rules (e.g., whether it is signed, whether it was filed at an appropriate time, and whether the §15 claims are properly set forth).

When a §15 affidavit complies with the requirements of the statute and rules, the Office updates its records to acknowledge receipt of the affidavit and sends a notice of acknowledgment to the owner of the registration.

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If the §15 affidavit does not comply with the statute and rules, the Office issues a written action notifying the registrant of any inconsistency or error, but does not require correction. The Office does *not* update its records to acknowledge receipt of a noncompliant affidavit. Submission of another affidavit is optional with the registrant.

A fee is required for each class in the registration to which the §15 affidavit or declaration pertains. *See* 37 C.F.R. §§2.6 and 2.167(g).

To expedite processing, the Office prefers that the owner file the §15 affidavit electronically through TEAS, available at <http://www.uspto.gov>. *See* TMEP §1605.02 regarding the form for filing the §15 affidavit.

See TMEP §1605.05 regarding a combined affidavit or declaration under §§8 and 15 of the Act.

See TMEP §1216.02 regarding the effect of “incontestability” in *ex parte* examination.

1605.01

Registrations to Which §15 Affidavit Pertains

The provisions of §15 of the Trademark Act apply only to registrations issued on the Principal Register under the Act of 1946 and to registrations issued under the Acts of 1905 and 1881 that have been “published” under §12(c) of the Act, 15 U.S.C. §1062(c), to claim the benefits of the Act of 1946. *See* TMEP §1603 regarding §12(c).

Section 15 affidavits may not be filed for marks registered on the Supplemental Register of the Act of 1946, marks registered under the Act of 1920, or marks registered under the Acts of 1905 and 1881 for which the benefits of the Act of 1946 have not been claimed under §12(c). If a §15 affidavit is filed for a registration that is not eligible for the benefits of §15, the Office will return it and refund the filing fee.

1605.02

Form for Filing Affidavit of Incontestability

To expedite processing, the Office prefers that the owner file the §15 affidavit electronically through TEAS, available at <http://www.uspto.gov>. When the affidavit is submitted electronically, the Office immediately issues a confirmation of filing via e-mail that includes the date of receipt and a summary of the submission. This confirmation is evidence of filing should any question arise as to the filing date. *See* TMEP §301 for additional information about electronic filing.

Alternatively, the owner can call the Trademark Assistance Center at (703) 308-9000 or (800) 786-9199 to obtain a pre-printed form that can be mailed, faxed or hand-delivered to the Office.

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1605.03 Time for Filing Affidavit of Incontestability [R-1]

A §15 affidavit may not be filed until the federally registered mark has been in continuous use in commerce for at least five consecutive years after the date of registration. This may be any five-year period after the date of registration for marks registered under the Act of 1946, or after the date of publication under §12(c) for marks registered under the Acts of 1905 and 1881.

The registrant may file the affidavit within one year after the five-year period that is selected. 37 C.F.R. §2.167(f). The affidavit must be both executed and filed within that one-year period.

Under 37 C.F.R. §1.6(a)(4), an affidavit filed electronically through TEAS is considered to have been filed on the date the Office receives the transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See TMEP §301 for more information about electronic filing.

If the affidavit is filed on paper, the owner may use certificate of mailing or certificate of facsimile transmission procedures to avoid lateness. See TMEP §§305.02 and 306.05.

See TMEP §1605.05 regarding a combined affidavit under §§8 and 15 of the Act.

1605.04 Requirements for Affidavit or Declaration of Incontestability

Section 15 of the Act refers to the affidavit or declaration merely as “setting forth” the specified information. See 15 U.S.C. §1065(3). Therefore, no showing or proof beyond the registrant’s sworn statement (or declaration) is required.

The §15 affidavit must recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use for the required time and is still in use in commerce. 15 U.S.C. §1065(3); 37 C.F.R. §2.167(c). More than one affidavit may be filed at different times for different goods/services in the same registration.

Regardless of the basis for registration, the use on which the §15 affidavit is based must be use in commerce. This applies to foreign as well as domestic registrants. It is not necessary to specify the type of commerce (e.g., interstate) in which the mark is used. The Office presumes that a registrant who states that the mark is in use in commerce is stating that the mark is in use in a type of commerce that Congress can regulate, unless there is contradictory evidence in the record.

The §15 affidavit must state that there has been no final decision adverse to the registrant’s claim of ownership of the mark for the goods or services, or to the registrant’s right to register the mark or to keep the mark on the register. It must also state that there is no proceeding involving these rights pending in the United States Patent and Trademark Office or in a court and not finally disposed of. 15 U.S.C. §§1065(1) - 1065(3); 37 C.F.R. §§2.167(d) and (e). If the Office finds facts contrary

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to either of the foregoing statements, the Office will notify the registrant and will not stamp the copies of the registration in the Trademark Search Library or indicate receipt of the §15 affidavit in the Office's automated database. *See* TMEP §1605. (The Office does not consider a proceeding involving the mark in which the registrant is the plaintiff, and there is no counterclaim involving the registrant's rights in the mark, to be a "proceeding involving these rights" that would preclude the filing or acknowledgment of a §15 affidavit.)

In order to be effective, the §15 affidavit or declaration must be filed by the person who is the owner of the registration at the time the affidavit is filed.

The §15 affidavit must be signed and verified (sworn to) or supported by a declaration under 37 C.F.R. §2.20 by a person properly authorized to sign on behalf of the owner of the registration. A "person who is properly authorized to sign on behalf of the owner" is: (1) a person with legal authority to bind the owner; (2) a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or (3) an attorney as defined in 37 C.F.R. §10.1(c) who has an actual written or verbal power of attorney or an implied power of attorney from the owner. Generally, the Office does not question the authority of the person who signs a §15 affidavit, unless there is an inconsistency in the record as to the signatory's authority to sign.

See TMEP §§301 and 804.05 regarding signature of electronically filed affidavits or declarations.

The registrant may not amend or correct a §15 affidavit, but may file a substitute affidavit.

1605.05 Combining §15 Affidavit With §8 Affidavit

Under 37 C.F.R. §2.168(a), the affidavit or declaration filed under §15 of the Act may be combined with the affidavit or declaration required by §8 of the Act, if the combined affidavit or declaration meets the requirements of both §§8 and 15.

The filing fee for the combined §8 and §15 affidavit or declaration is the sum of the cost of the individual filings. For example, if the filing fee for the §8 affidavit is \$100 per class, and the filing fee for the §15 affidavit is \$200 per class, then the filing fee for the combined affidavit or declaration under §§8 and 15 is \$300 per class.

If the combined §8 and §15 affidavit is filed during the §8 grace period, the grace period surcharge per class for the §8 affidavit must be paid. There is no grace period surcharge for a §15 affidavit.

If a combined §8 and §15 affidavit is filed, and the §8 affidavit is deficient, the deficiency may be corrected before expiration of the relevant deadline set forth in §8 of the Act for no fee, or after expiration of the relevant deadline with the deficiency surcharge required by §8(c)(2) of the Act. *See* TMEP §§1604.17 *et seq.* for

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information about the procedures, deadlines, and surcharge for correcting deficiencies in a §8 affidavit. There is no deficiency surcharge for a §15 affidavit.

To expedite processing, the Office prefers that the owner file the combined §8 and §15 affidavit electronically through TEAS, available at <http://www.uspto.gov>. When the combined affidavit is submitted electronically, the Office immediately issues a confirmation of filing via e-mail that includes the date of receipt and a summary of the submission. This confirmation is evidence of filing should any question arise as to the filing date. See TMEP §301 for additional information about electronic filing. Alternatively, the owner can call the Trademark Assistance Center at (703) 308-9000 or (800) 786-9199 to obtain a pre-printed form that can be mailed, faxed or hand-delivered to the Office.

1605.06 Section 14 Limitation is Independent of §15 Affidavit

Section 14 of the Trademark Act, 15 U.S.C. §1064, limits the grounds that a third party can raise in a petition to cancel a mark registered on the Principal Register when the petition is filed more than five years from the date of registration or publication under §12(c). This limitation of grounds does *not* depend on the filing of a §15 affidavit. TBMP §308.02(b).

1606 Renewal of Registration [R-2]

15 U.S.C. §1059. *Renewal.*

(a) Subject to the provisions of section 8, each registration may be renewed for periods of 10 years at the end of each successive 10-year period following the date of registration upon payment of the prescribed fee and the filing of a written application, in such form as may be prescribed by the Director. Such application may be made at any time within 1 year before the end of each successive 10-year period for which the registration was issued or renewed, or it may be made within a grace period of 6 months after the end of each successive 10-year period, upon payment of a fee and surcharge prescribed therefor. If any application filed under this section is deficient, the deficiency may be corrected within the time prescribed after notification of the deficiency, upon payment of a surcharge prescribed therefor.

(b) If the Director refuses to renew the registration, the Director shall notify the registrant of the Director's refusal and the reasons therefor.

(c) If the registrant is not domiciled in the United States the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices

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or process may be served on the Director.

1606.01 Renewal of Registrations Issued Under Prior Acts

An application for renewal of a registration issued under a prior Act, where required, must meet all the requirements of 15 U.S.C. §1059 and 37 C.F.R. §2.183. *See* TMEP §1602.02 regarding the renewal of registrations issued under the Acts of 1881 and 1905, and TMEP §1602.03 regarding the renewal of registrations issued under the Act of 1920.

1606.02 Form for Filing Application for Renewal

To expedite processing, the Office prefers that the owner file the renewal application electronically through TEAS. *See* TMEP §301 for more information about electronic filing.

Because the deadlines for filing renewal applications coincide with the deadlines for filing affidavits of continued use or excusable nonuse under 15 U.S.C. §1058(a)(3) at the end of each ten-year period following the date of registration, the Office has created a form for filing a §8 affidavit combined with a renewal application. *See* TMEP §1604.19 for more information about combined filings under §§8 and 9 of the Act.

The form for the combined filing is available through TEAS at <http://www.uspto.gov>. Alternatively, the owner can call the Trademark Assistance Center at (703) 308-9000 or (800) 786-9199 to obtain a pre-printed form that can be mailed, faxed, or hand-delivered to the Office.

1606.03 Time for Filing Application for Renewal [R-1]

The application for renewal must be filed within one year before the expiration of the registration, or within the six-month grace period after the expiration of the registration with an additional grace period surcharge. If no renewal application is filed before the end of the grace period, the registration will expire. 15 U.S.C. §1059(a); 37 C.F.R. §2.182. *See* TMEP §§1602 *et seq.* as to the term of a registration.

A renewal application may be filed on the anniversary dates of the statutory period.

Example: For a registration issued on November 5, 1998, an application for renewal may be filed as early as November 5, 2007, and as late as November 5, 2008, before entering the six-month grace period.

Under 37 C.F.R. §1.6(a)(4), a renewal application filed electronically through TEAS is considered to have been filed on the date the Office receives the transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. When the renewal application is submitted electronically, the Office immediately issues a confirmation of filing via e-mail that includes the date of

§ 2.153

Publication requirements.

A registrant of a mark registered under the provisions of the Acts of 1881 or 1905 may at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit or declaration in accordance with §2.20 setting forth those goods stated in the registration on which said mark is in use in commerce, specifying the nature of such commerce, and stating that the registrant claims the benefits of the Trademark Act of 1946.

[31 FR 5262, Apr. 1, 1966]

§ 2.154

Publication in Official Gazette.

A notice of the claim of benefits under the Act of 1946 and a reproduction of the mark will then be published in the *Official Gazette* as soon as practicable. The published mark will retain its original registration number.

§ 2.155

Notice of publication.

The Office will send the registrant a notice of publication of the mark and of the requirement for filing the affidavit or declaration required by section 8 of the Act.

[64 FR 48924, Sept. 8, 1999]

§ 2.156

Not subject to opposition; subject to cancellation.

The published mark is not subject to opposition, but is subject to petitions to cancel as specified in §2.111 and to cancellation for failure to file the affidavit or declaration required by section 8 of the Act.

[64 FR 48924, Sept. 8, 1999]

Reregistration of Marks Registered Under Prior Acts

§ 2.158

Reregistration of marks registered under Acts of 1881, 1905, and 1920.

Trademarks registered under the Act of 1881, the Act of 1905 or the Act of 1920 may be reregistered under the Act of 1946, either on the Principal Register, if eligible, or on the Supplemental Register, but a new complete application for registration must be filed complying with the rules relating thereto, and such application will be subject to examination and other proceedings in the same manner as other applications filed under the Act of 1946. See §2.26 for use of old drawing.

Cancellation for Failure to File Affidavit or Declaration During Sixth Year

Authority: Secs. 2.161 to 2.165 also issued under sec. 8, 60 Stat. 431; 15 U.S.C. 1058.

§ 2.160

Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation of registration.

(a) During the following time periods, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse, or the registration will be cancelled:

(1)

(i) For registrations issued under the Trademark Act of 1946, on or after the fifth anniversary and no later than the sixth anniversary after the date of registration; or

(ii) For registrations issued under prior Acts, on or after the fifth anniversary and no later than the sixth anniversary after the date of publication under section 12(c) of the Act; and

(2) For all registrations, within the year before the end of every ten-year period after the date of registration.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2) of this section, with payment of the grace period surcharge required by section 8(c)(1) of the Act and §2.6.

(b) For the requirements for the affidavit or declaration, see §2.161.

§ 2.161

[64 FR 48924, Sept. 8, 1999]

§ 2.161

Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

A complete affidavit or declaration under section 8 of the Act must:

- (a) Be filed by the owner within the period set forth in §2.160(a);
- (b) Include a statement that is signed and verified (sworn to) or supported by a declaration under §2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in §2.160(a). A person who is properly authorized to sign on behalf of the owner is:
 - (1) A person with legal authority to bind the owner; or
 - (2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or
 - (3) An attorney as defined in §10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the owner.
- (c) Include the registration number;
- (d)(1) Include the fee required by §2.6 for each class of goods or services that the affidavit or declaration covers;
 - (2) If the affidavit or declaration is filed during the grace period under section 8(c)(1) of the Act, include the late fee per class required by §2.6;
 - (3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of §2.164 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;
- (e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under §2.161(f)(2);
 - (2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;
- (f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or
 - (2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark;
- (g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under §2.161(f)(2). The specimen must:
 - (1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of the services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen;
 - (2) Be flat and no larger than 8 1/2 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8.5 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the record. In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD-ROM, or a specimen in another appropriate medium.
 - (3) Be a digitized image in .jpg format, if transmitted through TEAS.

[64 FR 48924, Sept. 8, 1999, as amended at 67 FR 79522, Dec. 30, 2002, 68 FR 55769, Sept. 26, 2003]

§ 2.162

Notice to registrant.

When a certificate of registration is originally issued, the Office includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 8 of the Act. However the affidavit or declaration must be filed within the time period required by section 8 of the Act even if this notice is not received.

[64 FR 48925, Sept. 8, 1999]

(a) Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director for failure to comply with the provisions of subsection (b) of this section, upon the expiration of the following time periods, as applicable:

(1) For registrations issued pursuant to the provisions of this Act, at the end of 6 years following the date of registration.

(2) For registrations published under the provisions of section 12(c), at the end of 6 years following the date of publication under such section.

(3) For all registrations, at the end of each successive 10-year period following the date of registration.

(b) During the 1-year period immediately preceding the end of the applicable time period set forth in subsection (a), the owner of the registration shall pay the prescribed fee and file in the Patent and Trademark Office—

(1) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and such number of specimens or facsimiles showing current use of the mark as may be required by the Director; or

(2) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is not in use in commerce and showing that any such nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

(c)(1) The owner of the registration may make the submissions required under this section within a grace period of 6 months after the end of the applicable time period set forth in subsection (a). Such submissions are required to be accompanied by a surcharge prescribed by the Director.

(2) If any submission filed under this section is deficient, the deficiency may be corrected after the statutory time period and within the time prescribed after notification of the deficiency. Such submission is required to be accompanied by a surcharge prescribed by the Director.

(d) Special notice of the requirement for affidavits under this section shall be attached to each certificate of registration and notice of publication under section 12(c).

(e) The Director shall notify any owner who files 1 of the affidavits required by this section of the Director's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

(f) If the registrant is not domiciled in the United States, the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States whom may be served, notices or process may be served on proceedings affecting the mark, such no-

15 U.S.C. § 1065

§ 1065 Incontestability of right to use mark under certain conditions
[Section 15]

Except on a ground for which application to cancel may be filed at any time under paragraphs (3) and (5) of section 14 [§1064] of this Act, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of registration under this Act of such registered mark, the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided*, That—

- (1) there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and
- (2) there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of; and
- (3) an affidavit is filed with the Director within one year after the expiration of any such five-year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such five consecutive years and is still in use in commerce, and the other matters specified in paragraphs (1) and (2) of this section; and
- (4) no incontestable right shall be acquired in a mark which is the generic name for the goods or services or a portion thereof, for which it is registered.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this Act shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Director within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 12 [§1062] of this Act.

The Director shall notify any registrant who files the above-prescribed affidavit of the filing thereof.

COMBINED DECLARATION OF USE
AND INCONTESTABILITY UNDER
SECTIONS 8&15¹ OF THE
TRADEMARK ACT OF 1946,
AS AMENDED

MARK (Identify the mark)

REGISTRATION NO.

DATE OF REGISTRATION:

TO THE ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS:

REGISTRANT'S NAME:²

REGISTRANT'S CURRENT MAILING ADDRESS:

GOODS AND/OR SERVICES AND USE IN COMMERCE STATEMENT:

The mark shown in Registration No. _____, owned by the above-identified registrant, has been in continuous use in _____ commerce for five consecutive years from the date of registration or the (type of)³ date of publication under §12(c)⁴ to the present, on or in connection with all of the goods and/or services identified in the registration, (*except* for the following)⁵ _____;

as evidenced by the attached specimen(s)⁶ showing the mark as currently used. There has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the Patent and Trademark Office or in the courts.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the registrant; he/she believes the registrant to be the owner of the above identified registration; the trademark/service mark is in use in commerce; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Date

Signature

Telephone Number

Print or Type Name and Position
[if applicable]⁷

FOOTNOTES

1. If you do not have five years of continuous use, you should file a Section 8 affidavit only.
2. The present owner of the registration must file this form between the 5th and 6th year after registration. If ownership of the registration has changed since the registration date, provide supporting documentation if available or a verified explanation. The present owner should refer to itself as the registrant.
3. "Type of Commerce" must be specified as "interstate," "territorial," "foreign," or such other commerce as may lawfully be regulated by Congress. Foreign registrants must specify commerce which Congress may regulate, using wording such as "foreign commerce between the U.S. and a foreign country."
4. Use this combined form only when the five year period of continuous use, required for Section 15, (1) occurs between the 5th and 6th year after registration on the Principal Register, or (2) after publication under §12(c) as is required for Section 8.
5. List only those goods and/or services for which registrant is no longer using the mark. You should fill in this blank only if you are no longer using the mark on all the goods or services in the registration.
6. A specimen showing current use of the registered mark for at least one product or service in each class of the registration must be submitted with this form. Examples of specimens are tags or labels for goods, and advertisements for services. The registration number should be printed directly on the specimen.
7. If the present owner is an individual, the individual should sign the declaration.
8. If the present owner is a partnership, the declaration should be signed by a General Partner.
9. If the present owner is a corporation or similar juristic entity, the declaration should be signed by an officer of the corporation/entity. Please print or type the officer title of the person signing the declaration.

NOTE: If the registration is owned by more than one party, as joint owners, each owner must sign this declaration.

PTO Notification

You should receive written notification from the PTO of either the acceptance or rejection of this post registration document. If you do not receive written notification from the PTO within six months after filing, you may wish to telephone the Trademark Status Line at (703) 305-8747 or the Post Registration Division at (703) 308-9500.

FEES

For each declaration under Sections 8 & 15, the required fee is \$200.00 per international class. Please be aware that PTO fees may change. Changes, if any, are normally effective October 1 of each year. If this declaration is intended to cover less than the total number of classes in the registration, please specify the classes for which the declaration is submitted. The declaration, with appropriate fee(s), should be sent to:

BOX POST REG FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

MAILING INSTRUCTIONS BOX

Please note that the filing date of a document in the Patent and Trademarks Office is the date of receipt in the Office, not the date of deposit of the mail. 37 C.F.R. §1.6. To avoid lateness due to mail delay, use of the certificate of mailing set forth below, is encouraged.

CERTIFICATE OF MAILING

I do hereby certify that the foregoing are being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on (date).

Signature _____

Date of Deposit _____

Print or Type Name of Person Signing Certificate _____

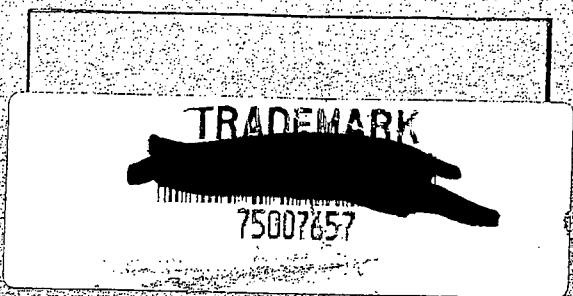
EXHIBIT M

1. REG. NO. 2058787		3. MARK WEBSTAT		4. SER. NO. 751007657	
2. REG. DATE MAY 06 1997				5. REGISTER ELECTRONIC	
6. INTERNATIONAL CLASS 9		7. PRIOR U.S. CLASS 21-23-26-36-38		8. FILING DATE 10/19/95	
9. LAW OFFICE 102					
10. APPLICANT AND POST OFFICE Huntana LLC 520 Locust Missoula, MONTANA 59802 CORPORATION OF MONTANA				16. EXAMINING ATTORNEY KEVIN PESKA-70738	
				17. TYPE OF MARK TRADEMARK	
				18. FIRST USE ICL 009 05/16/1995	
11. CORRESPONDENCE ADDRESS Susan M. Kornfield 110 Miller, Suite 300 Ann Arbor, MI 48104				19. IN COMMERCE ICL 009 05/16/1995	
12. DOMESTIC REPRESENTATIVE				20. FOREIGN REG. AND APPL. DATA	
13. APPLICANT'S ATTORNEY Susan M. Kornfield					
15. GOODS - SERVICES CGS-computer software for analyzing and monitoring electronic traffic at specific sites on computer systems					
21. OTHER DATA					
PTO-102L (REV. 12/82) U.S. DEPT. OF COMMERCE - PATENT AND TRADEMARK OFFICE					

Examining Attorney - (Please Print Name) Kevin R. Peska		Date Published in Trademark O.G.	
Approved for Publication (Principal Register) - (Signature) <i>[Signature]</i> 1/4/96		Section 8 Accepted - (Signature) <i>[Signature]</i>	
Approved for Registration (Section 1(d)) - (Signature)		Section 15 - (Signature) <i>[Signature]</i>	

28B

[Signature]
75117657



NEW CASE RECEIVED

APR 15 1996

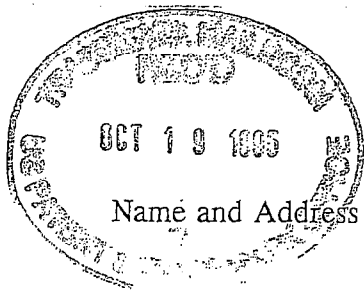
CONTENTS

LAW OFFICE OF

	Entry	Date	Initials
1.	<i>[Signature]</i>	APR 24 1996	MAY 1 1996
2.	<i>[Signature]</i>	8/21/96	NOV 4 1996
3.			
4.	<i>[Signature]</i>	5/5/03	
5.			
6.			
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9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

NOTES TO THE FILE AND APPROVALS

[illegible]



Name and Address of Applicant:

Huntana LLC
920 Locust St.
Missoula, Montana 59802

Date of First Use:

Applicant first used the mark in commerce on
May 16, 1995.

Date of First Use
in Interstate Commerce:

Applicant first used the mark in interstate
commerce on May 16, 1995.

Goods With Which
the Mark is Associated:

Computer software for analyzing and monitoring
electronic traffic at specific sites on computer
systems, in International Class 9.

Trademark:

WEBSTAT

TRADEMARK

75007657

PUBLISHED

FEB 11 1997

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,058,787

United States Patent and Trademark Office

Registered May 6, 1997

TRADEMARK
PRINCIPAL REGISTER

WEBSTAT

HUNTANA LLC (MONTANA LIMITED LI-
ABILITY COMPANY)
920 LOCUST
MISSOULA, MT 59802

SYSTEMS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36
AND 38).

FIRST USE 5-16-1995; IN COMMERCE
5-16-1995.

FOR: COMPUTER SOFTWARE FOR ANA-
LYZING AND MONITORING ELECTRONIC
TRAFFIC AT SPECIFIC SITES ON COMPUTER

SER. NO. 75-007,657, FILED 10-19-1995.

KEVIN PESKA, EXAMINING ATTORNEY

ABOUT WEBSTAT

WEBSTAT PRODUCT INFORMATION

WebStat is a set of perl-cgi scripts which allows one to analyze Web traffic. It runs on any Web server that supports standard cgi and the common logfile format. WebStat provides reliable figures for determining the popularity of Web documents.

Web Traffic Information Gathered by WebStat

Web Document Popularity Figures

Number of Total Hits.

Number of Unique IP visits.

Duration an HTML File is Read.

All this for any chosen Document or Directory.

HTTP Client Behavior Analysis

Session Activity for a Particular HTTP Client

Duration an HTML File is Read.

Registration, Pricing and Support Information

Running WebStat


On the server side

WebStat has been tested under both Unix and Windows NT platforms. WebStat works on any log file that is in the common logfile format.

On the Client side.

In order to properly run WebStat one needs a browser that supports both FORMS and TABLES such as the latest versions of NCSA Mosaic and Netscape.

Build your own copy of WebStat

 A first LOOK at some visual data provided by WebStat.

* Combined Declaration of Use and Incontestability Under Sections 8 & 15 *

*(15 U.S.C. §§ 1058 & 1065) *

* To the Commissioner for Trademarks *

<DOCUMENT INFORMATION>

<COMBINED DECLARATION OF USE AND INCONTESTABILITY UNDER SECTIONS 8 & 15>
<VERSION 1.22>

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> WEBSTAT
<REGISTRATION NUMBER> 2058787
<SERIAL NUMBER> 75007657
<REGISTRATION DATE> 05/06/1997

Refund Ref:
10/17/2003 CFITZGER 0000131583

CHECK Refund Total: \$300.00

<OWNER INFORMATION>

<NAME> Webstat.com LLC
<STREET> 241 N. Main
<CITY> Springfield
<STATE> UT
<COUNTRY> USA
<ZIP/POSTAL CODE> 84663
<E-MAIL ADDRESS> chris@webstat.com

Adjustment date: 10/17/2003 CFITZGER
05/06/2003 K6IBBONS 00000243 2058787
01 FC:6205 -100.00 DP
02 FC:6208 -200.00 DP

<GOODS AND SERVICES INFORMATION>

<ALL GOODS AND/OR SERVICES IN EXISTING REGISTRATION> Yes

~ The owner has used the mark in commerce for five consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with all goods and/or services listed in the existing registration. ~

<FEE INFORMATION>

<COMBINED SECTIONS 8 & 15 FILING FEE AMOUNT> 300
<NUMBER OF CLASSES> 1
<TOTAL FEES PAID> 300
<NUMBER OF CLASSES> 1

05/06/2003 K6IBBONS 00000243 2058787
01 FC:6205 100.00 DP
02 FC:6208 200.00 DP

<USE INFORMATION>

<SPECIMEN DESCRIPTION> internet website label and logo

<LAW OFFICE INFORMATION>

<E-MAIL ADDRESS FOR CORRESPONDENCE> chris@webstat.com

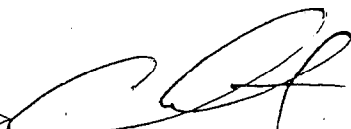
~ The USPTO is authorized to communicate with the applicant at the above e-mail address ~

<SIGNATURE AND OTHER INFORMATION>

Declaration: The owner is using [] is using through a related company [] mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The mark has been in continuous use in commerce for five consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with all goods and/or services listed in the existing registration. There has been no final decision adverse to the owner's claim of ownership of such mark for such goods and/or services, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the Patent and Trademark Office or in the courts. ~

~ The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true. ~

<SIGNATURE>



* please sign here*

<DATE>

4/15/2003

<NAME> Christopher J. Starkey

CERTIFICATE OF MAILING

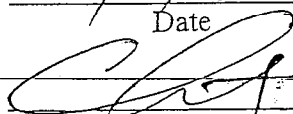
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

on

4/15/03

Date



Signature

Chris Starkey

Typed or printed name of person
signing certificate

HOME | ACCOUNT OUTLINE | SEE DEMO | SIGNUP | WEBSITE NEWS | SUPPORT | CONTACT US

Member Login:

Username:

Password:

Login

Click [HERE](#) if you forgot your username and/or password

Webstat Options:

- HOME
- ACCOUNT OUTLINE
- PRICING
- SEE LIVE DEMO
- SIGN UP
- WEBSITE NEWS
- HELP/FAQ
- PRIVACY STATEMENT
- WEB RESOURCES

THE FREE SITE

Discount Hotel Reservations

Price Comparison Shopping

Hotels by City

Viagra

Versicherungsvergleich

Specialists

WebSTAT: Best value in website statistics on the web



[Signup](#) →

[See Demo](#) →

WebSTAT offers over 50 different reports, which include:

- Comprehensive visitor breakdowns by month, day, and hour;
- Visitor averages, Trends, Browsers, Operating Systems, Javascript Versions, Screen Resolutions, Color Depths, Countries, and Service Providers;
- Marketing Trends such as your site's most Popular Pages, Search Engine Referrals, other Website Referrals, and Keywords used to locate your site through the most popular search engines. WebSTAT currently offers the top 100 entries of each report for each day from the time when the account was first activated. All reports are downloadable in the most popular formats for presentation (Printer Friendly format, Excel, PDF)

WebSTAT currently offers two account types: a Free account and a Premium account. View the online demo to see what WebSTAT has to offer you.

See our online demo

1
2
3
4
5

WebSTAT Premium

.COM


[account](#) [email](#) [logout](#)

 PerFXion - Free Photos, Graphics, Email Stationery <http://www.perfxion.com> Thu Feb 27, 2003 @ 01:41:52 PM

Reports

- General Summary
- Calendar Summary
- Visited Pages
- Hourly Visitors
- Hourly Page Views
- Daily Visitor Averages
- Daily Page View Averages
- Hourly Visitor Averages
- Hourly Page View Averages
- Monthly Visitor Trends
- Monthly Page View Trends
- Frequent Visitors
- Recent Visitors

Browsers

- Browsers Versions
- Operating Systems (OS)
- OS Versions
- Javascript Versions
- Screen Resolutions
- Color Depths
- Referring Pages
- Search Engines
- Keywords
- Countries
- Service Providers

Web Browsers: February 27, 2003

Web Browser	Visits	% of Total
Internet Explorer	598	100.00%

February 2003

Su	M	T	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

Quick Jump:

Feb 2003



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Select View Mode:



WebSTAT Premium

[account](#) [email](#) [logout](#)

 PerFXion - Free Photos, Graphics, Email Stationery <http://www.perfxion.com> Thu Feb 27, 2003 @ 01:41:39 PM

Reports

General Summary

- Calendar Summary
- Visited Pages
- Hourly Visitors
- Hourly Page Views
- Daily Visitor Averages
- Daily Page View Averages
- Hourly Visitor Averages
- Hourly Page View Averages
- Monthly Visitor Trends
- Monthly Page View Trends
- Frequent Visitors
- Recent Visitors
- Browsers
- Browsers Versions
- Operating Systems (OS)
- OS Versions
- Javascript Versions
- Screen Resolutions
- Color Depths
- Referring Pages
- Search Engines
- Keywords
- Countries
- Service Providers

Statistical Summary for: February, 2003

Report Generated on Thu, Feb 27, 2003 at 01:41:40 pm	Page Views	Unique Visitors
Today:	598	71
Yesterday:	1,613	168
Last Seven Days:	13,230	1,290
Average Page Views / Visitors per Day (this month):	1,034.00	103.07
Total (this month):	27,918	2,783
Unique Visitors are counted by unique IP addresses that have visited your site		
First Page View:	Thu, Apr 22, 1999 at 10:08:05 pm	
Last Page View:	Thu, Feb 27, 2003 at 01:40:20 pm	
Total Page Views / Unique Visitors (last month):	15,753 / 1,974	
Total Page Views (cumulative):	293,012	
Highest # Page Views in One Day:	3,789 (Tue, Feb 18, 2003)	

Download Report:



The original WebStat® by Huntana

Currently WebStat® is in a cocoon state, and a new version will be released combining the data analysis features of the original WebStat Explorer and WebStat Graphic along with the power and flexibility of Apache, Perl, and MySQL.

An older simple version of WebStat that counts hits/IPs for your Website can still be [downloaded](#)

WebStat® is a registered trademark of Huntana.

Third parties using the mark may do so only with the mark-holder's permission. Third parties must acknowledge ownership of WebStat via the ® symbol and a notation of the mark-holder, Huntana. Any third parties using the mark in conjunction with their own products or meanings without permission must cease and desist.

Questions or Comments

Last Refreshed: Fri May 7 15:52:35 MDT 1999

UNITED STATES PATENT AND TRADEMARK OFFICE

REGISTRATION NO: 2,058,787

REGISTRANT: Huntana LLC

October 16, 2003

CORRESPONDENT ADDRESS:

Webstat.com LLC
241 N. MAIN
SPRINGVILLE UT 84663

RETURN ADDRESS:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
TMPostRegistration@uspto.gov

MARK: WEBSTAT

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:
N/A

Please provide in all correspondence:

1. Registration date, registration number, mark and registrant's name.
2. Date of this Office Action.
3. Examiner's name and Post Registration Division.
4. Your telephone number and e-mail address.

POST REGISTRATION OFFICE ACTION

Receipt is acknowledged of the Affidavit submitted on April 17, 2003 under the provisions of Sections 8 & 15 of the Trademark Act is refused for the following reason(s).

An affidavit filed under the provisions of Section 8 & 15 has previously been accepted by this Office. This affidavit is, therefore, not required. The fee submitted will be scheduled for refund by the Finance Branch.

Charlie Fitzgerald
Legal Instrument Examiner
Post Registration Division
Office of Trademark Services
(703) 308-9500 X163

How to respond to this Office Action:

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the registration number, the words 'Post Registration' and the examiner's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT
THE ASSIGNED EXAMINER.**

~~EE~~ RECORD SHEET

Registration Number: 2058787

Serial Number: 75007657

75007657

RAM Sale Number: 755

Total Fees: \$300

RAM Accounting Date: 20030505

4

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
§8 affidavit	7205	20030505	\$100	1	\$100
§15 affidavit	7208	20030505	\$200	1	\$200

SPECIMEN

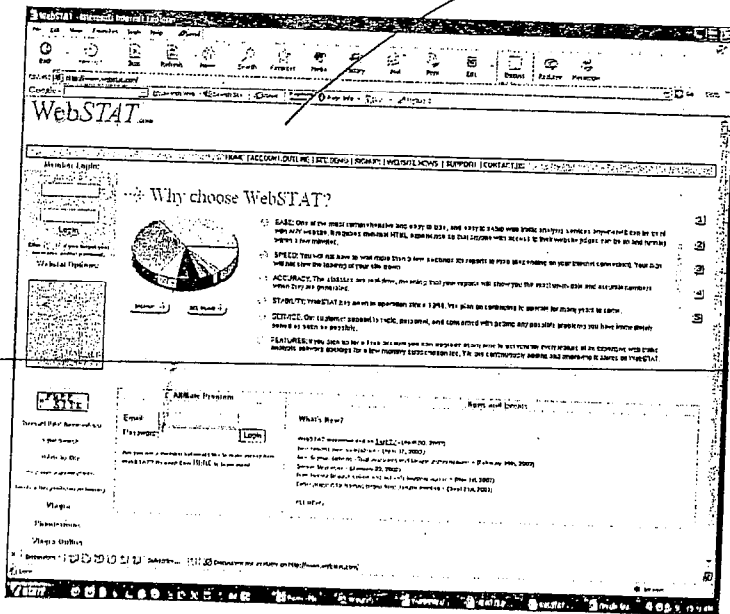
Internet Transmission Date:
05/05/2003

International Class:
009

Registration Number:
2058787

Serial Number:
75007657

75007657



Form 1583 (Rev 4/2000)

OMB Control #0651-0009 (Exp. 08/31/2004)

Combined Declaration of Use and Incontestability Under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
MARK	WEBSTAT
REGISTRATION NUMBER	2058787
REGISTRATION DATE	05/06/1997
SERIAL NUMBER	75007657
OWNER	
NAME	Huntana LLC
STREET	241 N. Main St.
CITY	Springville
STATE	UT
ZIP/POSTAL CODE	84663
COUNTRY	US
PHONE	801-491-3177
FAX	801-437-1124
EMAIL	chris@webstat.com
GOODS AND/OR SERVICES	
INTERNATIONAL CLASS	009
KEEP EXISTING GOODS AND/OR SERVICES	YES
SPECIMEN FILE NAME(S)	6510324910-05120428924-webstat.JPG
SPECIMEN DESCRIPTION	Front page screen shot of the Webstat online internet visitor tracking software.
SIGNATURE INFORMATION	
SIGNATURE	/Christopher J. Starkey/
SIGNATURE DATE	

	05/05/2003
SIGNATORY NAME	Christopher J. Starkey
SIGNATORY POSITION	Manager
PAYMENT	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	300
TOTAL AMOUNT	300
RAM SALE NUMBER	755
RAM ACCOUNTING DATE	20030505

Form 1583 (Rev 4/2000)

OMB Control #0651-0009 (Exp. 08/31/2004)

Combined Declaration of Use and Incontestability Under Sections 8 & 15

To the Commissioner for Trademarks:

MARK: WEBSTAT

REGISTRATION NUMBER: 2058787

REGISTRATION DATE: 05/06/1997

The owner, Huntana LLC, residing at 241 N. Main St., Springville, UT US 84663, is using the mark in commerce on or in connection with the goods and/or services as follows:

For International Class 009, the owner is using or is using through a related company the mark in commerce on or in connection with all goods and/or services listed in the existing registration.

The owner is submitting one specimen for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Front page screen shot of the Webstat online internet visitor tracking software..

Specimen-1

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

Declaration

The owner is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The mark has been in continuous use in commerce for five consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with all goods and/or services as identified above. There has been no final decision adverse to the owner's claim of ownership of such mark for such goods and/or services, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /Christopher J. Starkey/ Date: 05/05/2003
Signatory's Name: Christopher J. Starkey
Signatory's Position: Manager



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

Jan. 10, 1997

NOTICE OF PUBLICATION UNDER 12(a)

- | | |
|---------------------------------------|------------------------------|
| 1. Serial No.:
75/007,657 | 2. Mark:
WEBSTAT |
| 3. International Class(es):
9 | |
| 4. Publication Date:
Feb. 11, 1997 | 5. Applicant:
Huntana LLC |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained at \$28.00 each for domestic orders, or at \$35.00 each for foreign orders from:

The Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

By direction of the Commissioner.

BODMAN, LONGLEY & DAHLING LLP

110 Miller, Suite 300
Ann Arbor, Michigan 48104
(313) 761-3780
(313) 930-2494 FAX

FACSIMILE TRANSMITTAL FORM

TO: Kevin Peska, Examining Attorney DATE: August 21, 1996
FIRM: U.S. Patent and Trademark Office REFERENCE NO. 14445/1
FAX NO: (703) 308-7184 NO. OF PAGES (Including this Cover) 2
FROM: Angela M. Alvarez Sujek I.D. No. 0414
Legal Assistant to Susan M. Kornfield

Original Documents Will ☐ Will Not ☒ Follow by Mail

If you do not receive all the pages, please call us at: (313) 761-3780

MESSAGE: Mark: WEBSTAT

Serial No.: 75/007657

Mr. Peska, per your voice mail message, attached is the Declaration of Susan Hunter, Core Member of Huntana LLC in relation to the additional specimens which were submitted by facsimile on July 16, 1996. Thank you and if you need anything further, please call.

Re: Mark: WEBSTAT
Serial No.: 75/007657

DECLARATION

Pursuant to 37 C.F.R. §2.56

I, Susan Hunter, declare that I am a Core Member of Applicant, Huntana LLC, and that the enclosed substitute specimens were used in commerce at least as early as the filing date of the application.

I have been warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration.

August 21, 1996


Susan Hunter

BODMAN, LONGLEY & DAHLING LLP

110 Miller, Suite 300
Ann Arbor, Michigan 48104
(313) 761-3780
(313) 930-2494 FAX

FACSIMILE TRANSMITTAL FORM

TO: U.S. Patent and Trademark Office
Attn: Kevin Peska, Examining Attorney

DATE: July 16, 1996

FIRM:

REFERENCE NO. 01/07

FAX NO: (703) 308-7184

NO. OF PAGES (Including this Cover) 4

FROM: Susan M. Kornfield

I.D. No. 0148

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MESSAGE: Mr. Peska, please let us know if you need anything further with regard to the
~~mark WEBSTAT, Serial No. 75/007657. Thank you.~~

The information contained in this transmission is confidential and may be subject to the attorney-client privilege. It is intended only for the use of the individuals or entities named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for postage. Thank you.

BUILD WEBSTAT

BUILDING WEBSTAT FOR YOUR SITE

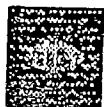
The building of a customized version of WebStat requires the completion of two forms. The first form asks for specific path and URL information. The second form asks for the directories and/or files you want WebStat to track. In total the build process takes only a few minutes.

For More information about the process of building WebStat please click [HERE](#)

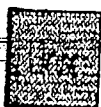
To begin: Choose the link below for your platform.

If you do not find your platform listed please [contact](#) us about the availability of WebStat for your site.

Windows NT

[WebStat for Website](#)[WebStat for Netscape](#)

Unix

[WebStat for all Unix](#)

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webstat@huntana.com ☐

Build a Customized Version of WebStat *by Huntana*

Please enter the appropriate path and URL information for your specific NT WebSite.

Enter your http log file path

e.g. d:/website/logs/access.log

Log Path:

Enter the URL of your CGI scripts

e.g. http://www.domain.com/cgi-bin/

CGI URL:

Enter the URL of where WebStat HTML front-end will reside

e.g. http://www.domain.com/webstat/

WebStat URL:

Please enter contact information below:

First Name:

Last Name:

Email address:

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□

WebStat Registration, Pricing and Support Information

WebStat by Huntana is shareware that can be evaluated for 30 days. Huntana will assist sites to ensure the proper installation and execution of WebStat. If one finds WebStat useful within 30 days and would like to continue using it they should register the product with Huntana for the amount of \$30 per server.

REGISTRATION of the software entitles one to free upgrades of future versions of WebStat and product support. It also entitles one to a discount of at least 33% off any other WebStat products.

We have not built any time bombs into the software yet so people are on the honor system to pay. I would prefer it this way, but our policy is subject to change. We intend on continuing the development of the WebStat product line to provide a low cost alternative to other Web accounting programs on the market, but we must be reasonably compensated in return .. 8)

Method of Payment:

Option 1)

Check made payable to:	Huntana LLC
Address:	920 Locust Missoula, MT 59802

Option 2)

Huntana will invoice the user of WebStat if they prefer.
Please send the appropriate address and contact information for
an invoice to: webstat@huntana.com

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Go to [WebStat HomePage](#)
Contact webstat@huntana.com

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 75/007657 Huntana LLC	APPLICANT 	PAPER NO.
MARK 		ADDRESS: ASSISTANT COMMISSIONER FOR TRADEMARKS 2900 Crystal Drive Arlington, Virginia 22202-3513 <small>If no fees are enclosed, the address should include the words "Box 5."</small> <small>Please provide in all correspondence:</small> 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.
WEBSTAT 		
ADDRESS Susan M. Kornfield 110 Miller, Suite 300 Ann Arbor, MI 48104	ACTION NO. 01	
	MAILING DATE 04/24/96	
		REF. NO.

FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

EXAMINER'S AMENDMENT

EXAMINING ATTORNEY	PERSON CALLED/INTERVIEWED	TELEPHONE NUMBER
Kevin R. Peska	Susan Kornfield	
<input checked="" type="checkbox"/> TELEPHONE CALL	INTERVIEW DATE	<input checked="" type="checkbox"/> ATTORNEY
<input type="checkbox"/> PERSONAL INTERVIEW	April 23, 1996	<input type="checkbox"/> APPLICANT

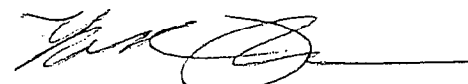
CALL RECORD/NOTES

OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

RE: Serial Number 74/007657

In accordance with the authorization granted by the above Applicant or attorney, the application has been AMENDED as indicated below. No response is necessary unless there is an objection to the amendment.

~~The date of first use of the mark anywhere is May 16, 1995.~~



Kevin R. Peska, Trademark Attorney
Law Office 102, (703) 308-9102 ext. 171



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WRITER'S DIRECT DIAL NO.

(313) 930-2488

December 21, 1995

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
Attn: Office of Program Control

Re: Serial No.: 75/007657
Date of Filing: 10/19/1995
Owner Name: Huntana LLC
Mark: WEBSTAT

By Federal Express

Enclosed please find the Filing Receipt received for the above referenced Application.

Please note that the Filing Receipt identifies the entity as a Montana corporation; however, please note that the entity is a Montana limited liability company, and not a corporation. Please make this correction in your records and send me a copy of the corrected Filing Receipt. Thank you for your assistance.

Please feel free to call me if you have any questions.

Very truly yours,

Susan M Kornfield
Susan M. Kornfield

SMK/as

RECEIVED
DEC 19 11:06
1995

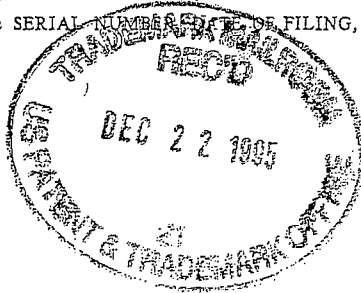
FILING RECEIPT FOR TRADEMARK APPLICATION

Page 01 of 01

11/28/95
Receipt on the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is contingent upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and you will be notified as to the examination thereof. Correspondence should be expected from the Patent and Trademark Office in approximately months. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

06

Susan M. Kornfield
110 Miller, Suite 300
Ann Arbor, MI 48104



TMPRE

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the notice of allowance should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Office of Trademark Program Control. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 75/007657

DATE OF FILING: 10/19/1995

MARK: WEBSTAT

MARK TYPE(S): TRADEMARK

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

SECTION 1(A): YES

SECTION 1(B): NO

SECTION 44: NO

ATTORNEY: Susan M. Kornfield

OWNER NAME: Huntana LLC

OWNER ADDRESS: 920 Locust

Missoula

MONTANA 59802

ENTITY: CORPORATION

CITIZENSHIP/DOMICILE: MONTANA

INTERNATIONAL CLASS

DATE OF FIRST USE

DATE OF FIRST USE IN COMMERCE

009

05/16/1995

05/16/1995

ONLY THOSE DATES OF USE AND CLASSES FILED UNDER SECTION 1(A) ARE LISTED

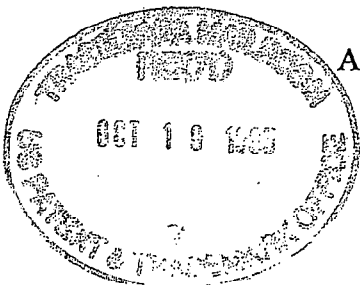
GOODS/SERVICES BY INTERNATIONAL CLASS

009-computer software for analyzing and monitoring electronic traffic at specific sites
on computer systems

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

#245 3/361

75007657



APPLICATION FOR TRADEMARK REGISTRATION
(DECLARATION)

Mark: WEBSTAT

International Class No.: 9

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

AA
(GS)
9
Huntana LLC, ^{MT} a Montana corporation ⁰³ with offices at 920 Locust, Missoula, Montana 59802, requests registration of the trademark shown in the accompanying drawing for "computer software for analyzing and monitoring electronic traffic at specific sites on computer systems" in ⁹ International Class 9 and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The mark was first used in commerce on May 16, 1995, was first used in interstate commerce on May 16, 1995, and is now in use in such commerce. The mark is used by Applicant by displaying the mark at the electronic site on the computer system from which customers read about the WEBSTAT computer program and download their own copy of the program, and three specimens showing the mark as actually used are presented herewith.

Susan Hunter, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that she is a Core Member of Applicant corporation and that she believes Applicant is the owner of the trademark sought to be registered; to the best of her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of her knowledge are true and all statements made on information and belief are believed to be true.

October 16, 1995

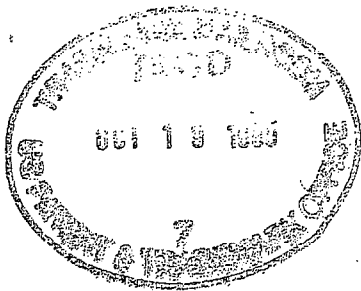
Susan Hunter

POWER OF ATTORNEY

AT
CA
Please recognize Susan M. Kornfield, admitted to practice in the States of Michigan and Illinois, and Lydia Pallas Loren, admitted to practice in the State of Michigan, both of Bodman, Longley & Dahling LLP, with offices at 110 Miller, Suite 300, Ann Arbor, Michigan 48104 [(313) 930-2488], to prosecute this application, to transact all business in connection therewith, and to receive the certificate.

October 16, 1995

Susan Hunter



75007657

BODMAN, LONGLEY & DAHLING LLP

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WRITER'S DIRECT DIAL NO.
(313) 930-2488

*ALSO ADMITTED IN FLORIDA
*ALSO ADMITTED IN ILLINOIS

October 17, 1995

Assistant Commissioner of Patents
and Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

By Certified Mail

Re: Trademark Registration of "WEBSTAT"

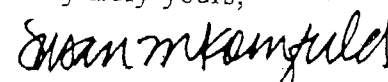
Ladies and Gentlemen:

With respect to the above-referenced Mark, enclosed please find an Application for Trademark Registration, the required "drawing" of the Mark, three specimens of the Mark as used in connection with the goods, and a check in the amount of \$245.00 made payable to the Commissioner of Patents and Trademarks.

Our firm has established a deposit account with your office, Account No. 02-2880. This letter will act as authority for you to withdraw from this account, should additional funds be needed to process this Application.

If there is further information required by you to process this Application, please do not hesitate to contact me.

Very truly yours,


Susan M. Kornfield

SMK/as

75007657

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

040 JJ 11/09/95 75007657

0 361

245.00 CK

*** User: EX692022 ***

STMT NUMBER	TOTAL MARKS	LIVE VIEWED	DEAD VIEWED	SEARCH
01	1	1	0	PHRASCH /OW huntana
02	1666	0	0	PHRASCH :web:
03	7718	0	0	PHRASCH :stat:
04	10	8	2	PHRASCH 2&3
05	1	1	0	PHONSCH webstat^webstats^web stat^web stats

TERMINAL SESSION STARTED 04/16/96 10:31 A.M. (EASTERN TIME)
TERMINAL SESSION FINISHED 04/16/96 10:42 A.M. (EASTERN TIME)
ELAPSED TIME THIS SESSION 0 HRS AND 11 MIN

AMENDMENT EXAMINATION WORK SHEET

Name: Elsie Bradley L.O.: 13 Date: 7/30/90 Serial No.: 007657

INSTRUCTIONS: To certify amendments the R&A Clerk should check the "AMENDED" column. The Text Editor should check "ENTERED" after the amendment has been entered.
RETAIN IN FILE.

SCREEN	AMENDED	ENTERED	AMENDED TO:
AM			Mark Type: Register: Mark: Owner: <input type="checkbox"/> Name <input type="checkbox"/> MDC: <input type="checkbox"/> Citizenship: <input type="checkbox"/> Entity Type:
PY			DBA/AKA/TA Statement: Address: <input type="checkbox"/> Inter <input type="checkbox"/> City <input type="checkbox"/> State/Country <input type="checkbox"/> Zip Assignment or Name Change: Composed of:
CL			International Class: U.S. Class: First Use: First Use in Commerce: Goods and Services:
AM			Amended Register: P.R.: S.R.: Amended Reg Date: Disclaimer: Description of Mark: Lining and Stippling Statement: Translation of Words in Mark: Name/Portrait Description/Consent: Section 2(f): <input type="checkbox"/> In Part <input type="checkbox"/> Limitation Statement <input type="checkbox"/> Entire Mark Use in Another Form: Certification Statement: Concurrent Use Statement: Prior U.S. Registrations: Domestic Representative:
OD T A T A R			
FN			Foreign Country of Origin: Foreign Application No.: Frgn. Appl. Filing Date: Section 44(e) Claimed: Y/N Section 44(d) Claimed: Y/N Foreign Registration No.: Frgn. Reg. Date: Foreign Registration Expiration Date: Foreign Renewal Reg. No.: Frgn. Reg. Renewed: Foreign Registration Renewed Expiration Date:
CD			Attorney Name: Correspondence: <input type="checkbox"/> Name <input type="checkbox"/> Inter St. Address <input type="checkbox"/> City/State/Zip Attorney Docket Number:

Other: _____

I certify that all corrections have been entered in accordance with the above instructions and text editing guidelines.

Initial Box if No Amendments are required.

5/6

TO: ☒ R&A CLERK ☒ TEXT EDITOR

RE: CORRECTIONS TO FILE/DATA BASE

PLEASE MAKE THE FOLLOWING CHANGES/CORRECTIONS TO:

☒ DATA BASE

☒ APPLICATION PAPERS

☒ FILE WRAPPER

The applicant is a Montana Limited
Liability Company (See applicant's letter of
12/22/95).

PUBLIC IN/REGISTRATION EXAMINATION SHEET

Reviewer: Sylvia Hammett-I

n

L.O.: 102Date: 12/31/16Serial No.: 007657

I certify all information in the database matched the information in the file and no corrections were required.

INSTRUCTIONS: If the information in the database does not match the information in the file the reviewer should check the ERROR column. After correction (text editing), the EDITED column should be checked. RETAIN IN FILE WRAP.

SCREEN	ERROR	EDITED	ERROR FOUND DURING REVIEW REQUIRING AMENDMENT OF:
AM			AM Mark Type:
			AM Register:
			AM Mark:
PY			PY Owner: <input type="checkbox"/> Name: <input type="checkbox"/> MDC:
			PY <input type="checkbox"/> Citizenship:
			PY <input checked="" type="checkbox"/> Entity Type: <u>Limited Liability Company</u>
			EN <input type="checkbox"/> Entity Statement:
			DB DBA/AKA/TA Statement:
			PY Address: <input type="checkbox"/> Inter <input type="checkbox"/> City <input type="checkbox"/> State/Country <input type="checkbox"/> Zip
			NC Assignment or Name Change:
			CO Composed of:
CL			CL International Class:
			CL First Use: U.S. Class:
			GS Goods and Services: First Use in Commerce:
			GS
			GS
			GS
AM			AM Amended Register:
			AM Amended Reg. Date: P.R.: S.R.:
			DI Disclaimer:
			DM Description of Mark:
			LS Lining and Stippling Statement:
			TR Translation of Words in Mark:
			NO Name/Portrait Description/Consent:
			TF Section 2(f): <input type="checkbox"/> Entire Mark
			<input type="checkbox"/> In Part <input type="checkbox"/> Limitation Statement:
			AF Use in Another Form:
			CS Certification Statement:
			CU Concurrent Use Statement:
			PR Prior U.S. Registrations:
			DR Domestic Representative:
			FN Foreign Country of Origin:
			FN Foreign Application No.: Frgn. Appl. Filing Date:
			FN Section 44(d): Y/N
			FN Foreign Registration No.: Frgn. Reg. Date:
			FN Foreign Registration Expiration Date:
			FN Foreign Renewal Reg. No.: Frgn. Reg. Renewed:
			FN Foreign Registration Renewed Expiration Date:
CD			AT Attorney Name:
			CD Correspondence: <input type="checkbox"/> Name <input type="checkbox"/> Inter St. Address <input type="checkbox"/> City/State/Zip
			DN Attorney Docket Number:

Other:

I certify that all corrections have been entered in accordance with the above instructions and text editing guidelines.

AM L T EXAMINATION WORK SHE

Name: Elsie Bradley Ofc: 101 Date: 10/23 Serial No.:

INSTRUCTIONS. To certify amendments the R&A Clerk should check the "AMENDED" column. The Text Editor should check "ENTERED" after the amendment has been entered. RETAIN IN FILE.

GREEN	AMENDED	ENTERED	AMENDED TO:
AM			AM Mark Type:
			AM Register:
			AM Mark: <input type="checkbox"/> MDC:
PY			PY Owner: <input type="checkbox"/> Name:
			PY <input type="checkbox"/> Citizenship:
			PY <input type="checkbox"/> Entity Type:
			DB DBA/AKA/TA Statement:
			PY Address: <input type="checkbox"/> Inter <input type="checkbox"/> City <input type="checkbox"/> State/Country <input type="checkbox"/> Zip
CL			NC Assignment or Name Change:
			CL International Class: U.S. Class:
			CL First Use: First Use in Commerce:
			CL
			GS Goods and Services:
AM			GS
			GS
			GS
			GS
			GS
O T H E R			AM Amended Register: P.R.: S.R.:
			AM Amended Reg Date:
			D1 Disclaimer:
			DM Description of Mark:
			LS Lining and Stippling Statement:
			TR Translation of Words in Mark:
			NO Name/Portrait Description/Consent:
			TF Section 2(f): <input type="checkbox"/> In Part <input type="checkbox"/> Limitation Statement <input type="checkbox"/> Entire Mark
			AF Use in Another Form:
			CS Certification Statement:
FN			CU Concurrent Use Statement:
			PR Prior U.S. Registrations:
			DR Domestic Representative:
			FN Foreign Country of Origin:
			FN Foreign Application No.: Frgn. Appl. Filing Date:
			FN Section 44(e) Claimed: Y/N Section 44(d) Claimed: Y/N
			FN Foreign Registration No.: Frgn. Reg. Date:
			FN Foreign Registration Expiration Date:
			FN Foreign Renewal Reg. No.: Frgn. Reg. Renewed:
			FN Foreign Registration Renewed Expiration Date:
CD			AT Attorney Name:
			CD Correspondence: <input type="checkbox"/> Name <input type="checkbox"/> Inter St. Address <input type="checkbox"/> City/State/Zip
			DN Attorney Docket Number:

Other:

CODING SHEET FOR PSEUDO MARKS AND DESIGN SEARCH CODES

SERIES CODE AND SERIAL NUMBER

75/007652

MARK DRAWING CODE

(please circle appropriate MDC)

1

2

3

5

6

PSEUDO MARK (PM)

WEB STATION

WIPO/DESIGN SEARCH CODES

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

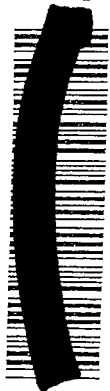
EXHIBIT N

REG NUM: 2395542

REG DT: 10/17/2000

S/N 75/785027

75785027



WEBSTAT.COM

WEBSTAT.COM

PRINCIPAL

LAW OFFICE 105

75785027

Julia Hardy Cofield

FILING DATE

September 17, 1999

ORIGINAL APPLICANT

Webstat.com L.L.C.

GOODS/SERVICES (CLASS 035)

internet-only statistics service which (ETC)

FILING BASIS

USE

ORIGINAL CORRESPONDENT

Webstat.com L.L.C.

ATTORNEY ADVISOR:



WEBSTAT.COM

WEB

LAW C

FILING DATE

September 17, 1999

ORIGINAL APPLICANT

Webstat.com L.L.C.

GOODS/SERVICES (CLASS 035)

a internet-only statistics service which (ETC)

FILING BASIS

USE

ORIGINAL CORRESPONDENT

Webstat.com L.L.C.

ATTORNEY ADVISOR:

Julia Hardy Cofield

PUBLISHED
07/25/00

Examining Attorney—(Please Print Name)

Julia Hardy Cofield

Approved for Publication (Principal Register)—(Signature)

Approved for Registration (Section 1(d))—(Signature)

Approved for Registration (Supplemental Register)—(Signature)

Section 8 Accepted—(Signature)

Section 15—(Signature)

Section 9 Renewal Accepted—(Signature)

75785027

TRADEMARK

75785027

NEW CASE DELIVERED

DEC - 8 1999

LAW OFFICE 115

CONTENTS

Entry

Date

DEC 14 1999

Initials

1.

Amata

MAR 29 2000

1/28/00

BA

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NOP 02

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07/25/00

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NOTES TO THE FILE AND APPROVALS

[illegible]

*** User: jcofield *

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	N/A	0	0	0:01	"webstat.com"[on]
02	5765	N/A	0	0	0:01	*web*[bi,ti]
03	16229	N/A	0	0	0:02	*st{v}t*[bi,ti]
04	35	9	5	5	0:01	2 and 3
05	706426	N/A	0	0	0:03	"035"[cc]
06	7876	N/A	0	0	0:01	3 and 5
07	136632	N/A	0	0	0:01	"035"[ic]
08	1168	N/A	1	1	0:01	3 and 7
09	7923	N/A	0	0	0:02	stat*[bi,ti]
10	588	N/A	5	5	0:01	9 and 7

Session started 12/7/99 3:46:10 PM

Session finished 12/7/99 3:52:27 PM

Total search duration 0:14 minutes

Session Duration 6:17 minutes

Default NEAR limit= 1 ADJ limit= 1

Drawing Page

Serial Number:

75785027

Applicant:

Webstat.com L.L.C.
656 S. State
Orem UT USA 84058



Date of First Use:

01/16/1999

Date of First Use in Commerce:

01/16/1999

Goods and Services:

A internet-only statistics service which provides website owners/managers with instant online statistics regarding the visitors to their websites.

Mark:

WEBSTAT.COM

PUBLISHED
07/25/00

NO OCR

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,395,542

United States Patent and Trademark Office

Registered Oct. 17, 2000

**SERVICE MARK
PRINCIPAL REGISTER**

WEBSTAT.COM

WEBSTAT.COM L.L.C. (UTAH LIMITED LIABILITY
COMPANY)
656 S. STATE
OREM, UT 84058

WEBSITE VIA A GLOBAL COMPUTER NETWORK,
IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-16-1999; IN COMMERCE 1-16-1999.

FOR: PROVIDING INSTANT STATISTICAL IN-
FORMATION TO WEBSITE OWNERS AND MAN-
AGERS REGARDING THE VISITORS TO THEIR

SER. NO. 75-785,027, FILED 9-17-1999.

JULIA HARDY COFIELD, EXAMINING ATTORNEY

DUPLICATE SPECIMEN

Internet Transmission Date:

1999/09/17

Serial Number:

75785027

Filing Date:

1999/09/17



The applicant has submitted required color specimen.
The USPTO has printed only one copy of the specimen,
and extra copies can be produced in-house as needed.

ORIGINAL SPECIMEN

Internet Transmission Date:

1999/09/17

Serial Number:

75785027

Filing Date:

1999/09/17



The applicant has submitted required color specimen.
The USPTO has printed only one copy of the specimen,
and extra copies may be ordered.



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

Jun 26, 2000

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.: 75/785,027
2. Mark: WEBSTAT.COM
3. International Class(es): 35
4. Publication Date: Jul 25, 2000
5. Applicant: Webstat.com L.L.C.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained at \$38.00 each for domestic orders, or at \$47.50 each for foreign orders from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: (202)512-1800

By direction of the Commissioner.

T~~RA~~DE MARK EXAMINATION WORKSHEET

☐ AMENDMENT STAGE

☒ NO CHANGE

☐ PUBLICATION/REGISTRATION STAGE

Name: LaWana Durant L.O. 115

Date: JUN - 5 2000

Serial No.

75-785027

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

Legal Instrument Examiner (LIE)

	Amended	Data Element	
Class Data		<input type="checkbox"/> Prime/International Class	<input type="checkbox"/> Goods and Services
		<input type="checkbox"/> First Use Date	<input type="checkbox"/> First Use in Commerce Date
		<input type="checkbox"/> In Another Form	<input type="checkbox"/> Certification
		<input type="checkbox"/> 1b	
Mark Data		<input type="checkbox"/> Word Mark	<input type="checkbox"/> Pseudo Mark
		<input type="checkbox"/> Mark Drawing Code	<input type="checkbox"/> Design Search Code
		<input type="checkbox"/> Sizing/Lining Code	
Misc. Mark Data		<input type="checkbox"/> Mark Description	<input type="checkbox"/> Disclaimer
		<input type="checkbox"/> Lining/Stippling	<input type="checkbox"/> Name/Portrait/Consent
		<input type="checkbox"/> Translation	
Section 2(f)		<input type="checkbox"/> Section 2(f) Entire Mark	
		<input type="checkbox"/> Section 2(f) Limitation Statement	<input type="checkbox"/> Section 2(f) in Part
		<input type="checkbox"/> Amended Register	<input type="checkbox"/> Amended Register Date
Foreign Reg. Data		<input type="checkbox"/> Foreign Country	<input type="checkbox"/> 44(d)
		<input type="checkbox"/> Foreign Application Number	<input type="checkbox"/> Foreign Application Filing Date
		<input type="checkbox"/> Foreign Registration Number	<input type="checkbox"/> Foreign Registration Date
		<input type="checkbox"/> Foreign Registration Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Number
		<input type="checkbox"/> Foreign Reg. Renewal Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Date
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		<input type="checkbox"/> Address 1	<input type="checkbox"/> Address 2
		<input type="checkbox"/> City	<input type="checkbox"/> State
		<input type="checkbox"/> Zip Code	
		<input type="checkbox"/> Citizenship	<input type="checkbox"/> Entity
		<input type="checkbox"/> Entity Statement	<input type="checkbox"/> Composed of
		<input type="checkbox"/> Assignment(s)/Name Change	
Amd/Corr Restr.		<input type="checkbox"/> Concurrent Use	
Prior U.S. Reg.		<input type="checkbox"/> Prior Registration	
Correspondence		<input type="checkbox"/> Attorney	<input type="checkbox"/> Domestic Representative
		<input type="checkbox"/> Attorney Docket Number	
		<input type="checkbox"/> Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

JUN - 5 2000

LaWana Durant

LIE

DATE

Other: _____

TRADEMARK EXAMINATION WORKSHEET

☒ AMENDMENT STAGE

☐ NO CHANGE

☐ PUBLICATION/REGISTRATION STAGE

Name: Tawana Campbell

L.O. 113

Date: March 22, 2000

Serial No. 7/5027

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

Legal Instrument Examiner (LIE)

	Amended	Data Element
Class Data	<input checked="" type="checkbox"/>	<input type="checkbox"/> Prime/International Class
		<input checked="" type="checkbox"/> Goods and Services
		<input type="checkbox"/> First Use Date
		<input type="checkbox"/> First Use in Commerce Date
		<input type="checkbox"/> In Another Form
		<input type="checkbox"/> Certification
		<input type="checkbox"/> 1b
Mark Data		<input type="checkbox"/> Word Mark
		<input type="checkbox"/> Pseudo Mark
		<input type="checkbox"/> Mark Drawing Code
		<input type="checkbox"/> Design Search Code
		<input type="checkbox"/> Sizing/Lining Code
Misc. Mark Data		<input type="checkbox"/> Mark Description
		<input type="checkbox"/> Disclaimer
		<input type="checkbox"/> Lining/Stippling
		<input type="checkbox"/> Name/Portrait/Consent
		<input type="checkbox"/> Translation
Section 2(f)		<input type="checkbox"/> Section 2(f) Entire Mark
		<input type="checkbox"/> Section 2(f) Limitation Statement
		<input type="checkbox"/> Section 2(f) in Part
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		<input type="checkbox"/> Foreign Application Filing Date
		<input type="checkbox"/> Foreign Registration Number
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		<input type="checkbox"/> Address 2
		<input type="checkbox"/> City
		<input type="checkbox"/> State
		<input type="checkbox"/> Zip Code
		<input type="checkbox"/> Citizenship
		<input type="checkbox"/> Entity
		<input type="checkbox"/> Entity Statement
		<input type="checkbox"/> Composed of
		<input type="checkbox"/> Assignment(s)/Name Change
Amd/Corr Restr.		<input type="checkbox"/> Concurrent Use
Prior U.S. Reg.		<input type="checkbox"/> Prior Registration
Correspondence		<input type="checkbox"/> Attorney
		<input type="checkbox"/> Domestic Representative
		<input type="checkbox"/> Attorney Docket Number
		<input type="checkbox"/> Correspondence Firm Name/Address

I certify that all corrections have been entered in accordance with text editing guidelines.

LIE

DATE

Other:



01-28-2000

U.S. Patent & TMO/TM Mail Rpt Dt. #54

Webstat.com, L.L.C.
656 S. State
Orem, UT 84058
801-724-9900

Assistant Commissioner for Trademarks
Box Responses - No Fee
2900 Crystal Drive
Arlington, VA 22202-3513

Re: 75/785027
Webstat.com L.L.C.
WEBSTAT.COM
12/14/99

01/26/00

To Whom It May Concern:

In response to the letter dated 12/14/99 from Law Office 115, which refused registration for the mark WEBSTAT.COM. We propose a modification to the recitation of services to read, "Providing instant statistical information to website owners and managers regarding the visitors to their website via a global computer network." This modification then clarifies that WEBSTAT.COM is not software, but rather a website providing statistical information and should set it apart from the mark No. 75007657.

We, the managers of WEBSTAT.COM, do fully authorize and endorse these changes and do authorize the representative of the United States Department of Commerce Patent and Trademark Office to enact the change outlined in this letter above.

Sincerely,

1/26/00

Chris Starkey

Dan Galbraith

1/26/00

UNITED STATES
rad

TRADEMARK LAW OFFICE 15

Serial Number: 75/785027

Mark: WEBSTAT.COM

Please Place on Upper Right Corner
of Response to Office Action ONLY

715

RECEIVED

2000 FEB -3 P 1:50

TMO
LAW OFFICE 115

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 75/785027 APPLICANT Webstat.com L.L.C.		PAPER NO.
MARK WEBSTAT.COM		ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 <small>If no fees are enclosed, the address should include the words "Box Responses - No Fee."</small>
ADDRESS Webstat.com L.L.C. 656 S. State Drem UT 84058	ACTION NO. 01	
MAILING DATE 12/14/99	REF. NO.	
<small>FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE</small>		<small>Please provide in all correspondence:</small> <ol style="list-style-type: none">1. Filing Date, serial number, mark and Applicant's name.2. Mailing date of this Office action.3. Examining Attorney's name and Law Office number.4. Your telephone number and ZIP code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/785027

~~The assigned examining attorney has reviewed the referenced application and determined the following.~~

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified services, so resembles the mark in U.S. Registration No. 75007657 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

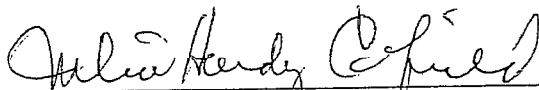
The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

In this case, the marks are similar in overall commercial impression, and the goods and services appear to be related and appear to travel in the same trade channels.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informality.

The recitation of services is too indefinite for registration purposes. Therefore, the applicant must amend the recitation to read as follows, if accurate:

"Providing instant statistical information to website owners and managers regarding the visitors to their website via a global computer network," in International Class 35.



Julia Hardy Cofield, Examining Attorney
Law Office 115
(703) 308-9115 ext. 145

*** User: jcofield *** Serial Number: 75007657 *** 12/7/99 3:52:15 PM

[Typed Drawing]

Mark

WEBSTAT

Pseudo Mark

WEB STATION

Goods and Services

IC 009. US 021 023 026 036 038. G & S: computer software for analyzing and monitoring electronic traffic at specific sites on computer systems. FIRST USE: 19950516. FIRST USE IN COMMERCE: 19950516

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75007657

Filing Date

October 19, 1995

Publication for Opposition Date

February 11, 1997

Registration Number

2058787

Registration Date

May 6, 1997

Owner Name and Address

(REGISTRANT) Huntana LLC LIMITED LIABILITY COMPANY MONTANA 920 Locust
Missoula MONTANA 59802

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

rendering or advertising of the services, or in other ways customary in the trade. *

<FIRST USE ANYWHERE DATE> 01/16/1999

<FIRST USE IN COMMERCE DATE> 01/16/1999

<TYPE OF COMMERCE> Interstate

* PTO-Application Declaration: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. *

<REQUIRED SIGNATURE AND OTHER INFORMATION>

<SIGNATURE> /dan-galbraith/

<DATE SIGNED> 09/17/1999

<NAME> Dan Galbraith

<TITLE> President

<MAILING ADDRESS>

<LINE> Webstat.com L.L.C.

<LINE> 656 S. State

<LINE> Orem UT 84058

<LINE> USA

<CREDIT CARD INFORMATION>

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<RAM ACCOUNTING DATE> 19990920

<SERIAL NUMBER INFORMATION>

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<INTERNET TRANSMISSION DATE> Friday, 09-17-1999 17:03:56 EDT

<TEAS STAMP>

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CC-22-1999091716578625

625

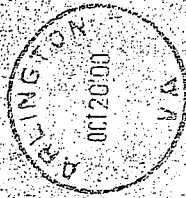
AN EQUAL OPPORTUNITY EMPLOYER

U.S. OFFICIAL MAIL
U.S. POSTAGE

PENALTY
FOR
PRIVATE
USE

0055

METER
703862



WEBS656 840582002 IN 02 10/24/00
RETURN TO SENDER

NO FORWARD ORDER ON FILE
UNABLE TO FORWARD
RETURN TO SENDER

2395542 75785027 10/17/00

ADDRESSER.COM L.L.C.
556 S. State
Orlando, FL 32805



- ☐ INSUFFICIENT ADDRESS
- ☐ MOVED, LEFT NO ADDRESS
- ☐ NO SUCH NUMBER
- ☐ UNCLAIMED ☐ REFUSED
- ☐ ATTEMPTED NOT KNOWN
- ☐ NO SUCH STREET ☐ VACANT
- ☐ NO RT
- ☐ BOX CLOSED NO RETURN
- ☐ NOT DELIVERABLE AS
- ☐ ADDRESSED; UNABLE
- ☐ TO FORWARD RT

5877
10.25.00

EXHIBIT 0

SECRETARY OF STATE
STATE OF MONTANA



Mike Cooney
Secretary of State

Montana State Capitol
PO Box 202801
Helena, MT 59620-2801

COPY

August 14, 1995

Matt X Hunter
Huntana
920 Locust
Missoula MT 59802

RE: HUNTANA LLC
Date of Filing: July 19, 1995
Filing Number: C083745-335886

Dear Mr. Hunter:

Attached please find a copy of the documents you recently filed with this office. The document number and filing date have been recorded on the copy I've attached. These documents serve as your certificate of filing and should be maintained in your files for future reference.

The cancellation of the assumed business name, for HUNTANA has been filed under document number 47865.

Thank you for giving this office the opportunity to serve you. If you have any questions in this regard, or need additional assistance, please do not hesitate to contact the Business Services Bureau professionals at (406) 444-3665....we're here to serve you!

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Cooney".

Enclosure

STATE OF MONTANA

ARTICLES of ORGANIZATION for
DOMESTIC LIMITED LIABILITY COMPANY
(35-8-202, MCA)



MAIL TO: MIKE COONEY
Secretary of State
P.O. Box 202801
Helena, MT 59620-2801
☎(406)444-3665

Prepare, sign and submit an original and copy with fee.
This is the minimum information required.
(for use by the Secretary of State only)

335886
STATE OF MONTANA

FILED

JUL 19 1995

SECRETARY OF STATE

Form: LC-1
Filing Fee: \$70.00

► Executed by the undersigned for the purpose of forming a Montana Limited Liability Company.

PLEASE CHECK ONE BOX:

☒ Limited Liability Company

☐ Professional Limited Liability Company

► FIRST: The name of the limited liability company is (must contain "limited liability company", "limited company" or if Professional, "professional limited liability company", or an abbreviation)

Huntana LLC

► SECOND: The name and address of its registered office/agent is:

Name Matt X. Hunter

Address 920 Locust Street

Missoula

MONTANA Zip Code 59802

► THIRD: The address of its principal place of business in Montana:

Address 920 Locust Street

City Missoula

MONTANA Zip Code 59802

► FOURTH: The latest date on which the LLC is to dissolve is January 1, 2025

► FIFTH: The LLC will be managed by a ☐ Manager or by its ☒ Members.

► SIXTH: The names of the Managers or Members and street addresses are:

Nicholas J. Cutler 1356 McCutcheon Apt F St. Louis MO 63144

Susan T. Hunter 11460 Algonquin Pinckney MI 48169

Matthew X. Hunter 920 Locust Missoula MT 59802

► SEVENTH: If a Professional Limited Liability Company, the services to be provided

June 28, 1995
Dated

Matt X Hunter
Signature of Organizer

Matt X Hunter 920 Locust
Printed Name and Address

Missoula, MT 59802

Names and addresses of registered businesses (Managers or Member/Managers): The businesses must be registered with the Secretary of State's Office.

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

By my signature below, I, a member of the above limited liability company authorized to execute documents on its behalf, do state that any and all statements contained herein are true and based upon actions taken by the LLC in accordance with the statutes or its articles of organization or operating agreement.

And I further state that the LLC remains in existence and has taken the necessary actions during the past year to preserve the status.

ID OF LLC: C-083745

X Matt X. Hunter
Signature of Member

Matt X. Hunter
Printed Name of Member Signing

April 14, 1996
Date

SECRETARY OF STATE
STATE OF MONTANA
Mike Cooney



Business Services Bureau
Rose Ann Crawford, Deputy
Phone: (406) 444-3665

Montana State Capitol
P.O. Box 202801
Helena, MT 59620-2801

September 02, 1997

MONTANA LLC

MATT X HUNTER
920 LOCUST ST
MISSOULA

MT T5980-2

Folder: C-083745
Corp Type: 67
Date Last Report: 04/16/1996
Fees & Penalty: \$30.00

INVOLUNTARY DISSOLUTION INTENT NOTICE

Dear Company Official:

Montana law requires every limited liability company to file an annual report with accompanying fees each year by April 15. As of the above date, our records indicate we have not yet received the report. Unfortunately, the limited liability company is therefore in default and is subject to being involuntarily dissolved.

In January, all annual reports were mailed to the registered agent in Montana. All future correspondence will continue to be sent to the registered agent shown above unless a statement of change is filed with this office.

Upon mailing of this notice, involuntary dissolution proceedings against the limited liability company have been initiated. This is the standard action the law requires this office take with limited liability companies that have fallen behind in their reports and fees.

To return the limited liability company to good standing you must submit a current annual report and pay the amount of fees and penalty listed above within 90 days. Enclosed you will find a preprinted form for your use. Please make necessary changes and have a member sign and list their address where indicated on the back.

Remember, you only have 90 days to respond. If we do not receive your report and past due fee by December 1, 1997, we will have no choice but to order the limited liability company dissolved and it will no longer exist.

If you have any questions about this notice, or if your records indicate an error, please don't hesitate to contact our office at the phone number listed above.

Sincerely,

Rose Ann Crawford
Rose Ann Crawford
Deputy, Business Services Bureau

SECRETARY OF STATE
STATE OF MONTANA
Mike Cooney

Business Services Bureau
Rose Ann Crawford, Deputy
Phone: (406) 444-3665



Montana State Capitol
P.O. Box 202801
Helena, MT 59620-2801

December 01, 1997

INVOLUNTARY DISSOLUTION NOTICE

HUNTANA LLC

MATT X HUNTER
920 LOCUST ST
MISSOULA MT 59802-4833

Folder: C-083745
Corp Type: 67
Date Last Report: 04/16/1996
Fees & Penalty: \$30.00

Dear Company Official:

On September 02, 1997, the above named limited liability company was notified that it would be dissolved unless the legally required annual reports and fees were submitted to the Secretary of State within 90 days. Since this was not done, the Secretary of State has ordered that this limited liability company be involuntarily dissolved according to Section 35-8-209, Montana Code Annotated.

Upon mailing of this notice, dissolution proceedings against the limited liability company have been completed. This means that the limited liability company has forfeited all its rights to carry on business within the state of Montana.

If you have any questions concerning this action, please don't hesitate to contact our office at the phone number listed above.

Sincerely,

Rose Ann Crawford
Rose Ann Crawford
Deputy, Business Services Bureau

STATE OF MONTANA

Office of the Secretary of State



I hereby certify this is a true and correct copy, consisting of 16 pages, as taken from the original on file in this office. Originality of this certification can be determined by the color blue.

DATED: 04-09-2004

Bob Brown
Bob Brown

BY:

Pat Haffey
Deputy Secretary of State

EXHIBIT P

COMBINED DECLARATION OF USE
AND INCONTESTABILITY UNDER
SECTIONS 8&15¹ OF THE
TRADEMARK ACT OF 1946,
AS AMENDED

MARK (Identify the mark)

REGISTRATION NO.

DATE OF REGISTRATION:

TO THE ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS:

REGISTRANT'S NAME:²

REGISTRANT'S CURRENT MAILING ADDRESS:

GOODS AND/OR SERVICES AND USE IN COMMERCE STATEMENT:

The mark shown in Registration No. _____, owned by the above-identified registrant, has been in continuous use in _____ commerce for five consecutive years from the date of registration or the (type of)³ _____ date of publication under §12(c)⁴ to the present, on or in connection with all of the goods and/or services identified in the registration, (*except for the following*)⁵ _____

as evidenced by the attached specimen(s)⁶ showing the mark as currently used. There has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and there is no proceeding involving said ~~rights pending and not disposed of either in the Patent and Trademark Office or in the courts~~

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the registrant; he/she believes the registrant to be the owner of the above identified registration; the trademark/service mark is in use in commerce; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Date

Signature

Telephone Number

Print or Type Name and Position
[if applicable]⁷